

CONTRACT BETWEEN

**IOWA DEPARTMENT OF HUMAN
SERVICES**

AND

CONTRACTOR

**TEMPLATE
FOR THE**

IOWA MEDICAID ENTERPRISE

Contractor

Contract # MED-12-001

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1 IDENTITY OF THE PARTIES

The State of Iowa, Department of Human Services, (referred to in this document as “the Department” or “DHS”) is the issuing agency for this Contract (“the Contract”). The Department’s address is:

Iowa Department of Human Services
Iowa Medicaid Enterprise
100 Army Post Road
Des Moines, IA 50315

[Name of contractor] (referred to in this document as “Contractor”) is the contracting entity and is entering into this Contract to provide the services as defined herein. The address of the Contractor is:

[contractor address here]

2 NOTICES

Notices under the Contract shall be in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express or other similar and reliable carrier to the representative of the parties to receive notice identified below, at the address as it appears.

If to Department:

Mary Tavegia
Contract Administrator
Iowa Department of Human Services
Iowa Medicaid Enterprise
100 Army Post Road
Des Moines, IA 50315

and

Office of the Iowa Attorney General
Regents & Human Services Division
Hoover State Office Building, 2nd Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114

If to Contractor:

[Delivery address for contractor]

Each notice shall be deemed to have been provided at the time it is actually received, within one (1) day in the case of overnight hand delivery or services such as Federal Express with guaranteed next day delivery, or within five (5) days after it is deposited in the U.S. Mail in the case of registered or certified mail.

From time to time, the parties may change the name and address of a party designated to receive notice. Such changes of the designated person shall be in writing to the other party and as provided herein.

3 INCORPORATION/PRIORITY

3.1 Incorporation of Documents: The Request for Proposal (RFP) MED-12-001 and all amendments thereto form the RFP and are hereinafter referred to as the “RFP.” The Contractor agrees to all terms and conditions set forth in the RFP unless specifically noted in this Contract by reference to the RFP section and page numbers. The Contractor’s Bid Proposal, any amendments, and the Contractor’s Best and Final Offer, if applicable, collectively form the Bid Proposal and are hereinafter referred to as the “Bid Proposal.” The Bid Proposal and the RFP are incorporated herein by reference. The parties are obligated to perform all services and to meet all of the performance standards described in the Contract.

3.2 Order of Priority: In the event of a conflict between the Contract, the RFP, and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: the Contract, the RFP, the Bid Proposal.

3.3 No Inconsistency: Proposed revisions or modifications made by Contractor to the sample contracts attached to the RFP or the RFP itself shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Contractor or the Department hereunder, unless expressly stated herein. The references to the parties’ obligations, which are contained in this document are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Contractor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the Department shall have only those obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the Department.

4 DEFINITIONS

In addition to any other terms that may be defined elsewhere in this Contract, the following terms shall have the following meanings:

“Acceptance” means that the Department has determined that one or more Deliverables satisfy the Department’s Acceptance Tests. Final Acceptance means that the Department has determined that all Deliverables to be provided under a Statement of Work satisfy the Department’s Acceptance Tests. Non-acceptance means that the Department has determined that one or more Deliverables have not satisfied the Department’s Acceptance Tests.

“Acceptance Criteria” means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Department and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.

“Acceptance Tests” or “Acceptance Testing” mean the tests, reviews and other activities that are performed by or on behalf of Department to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Department, as determined by the Department in its sole discretion. Acceptance Testing may include testing of individual or multiple units, modules or components, system or integration testing, user-acceptance testing, load/stress

testing, system security testing, network testing, recovery/backup testing, data transfer, migration and conversion testing, and Documentation review.

“Authorized Contractors” means independent contractors, consultants or other Third Parties who are retained or hired by the State, the Department or any other Governmental Entity of the State to use, maintain, support, modify, or enhance the System or to otherwise assist Department with its use of the System for other purposes.

“Confidential Information” means, means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “disclosing party”) to the other party (a “receiving party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the information by the disclosing party to the receiving party; (ii) was known to the receiving party prior to the disclosure of the information by the disclosing party; (iii) was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the receiving party in violation of this Contract or in breach of any other agreement with the disclosing party; (v) is independently developed by the receiving party without any reliance on Confidential Information disclosed by the disclosing party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the receiving party with the written consent of the disclosing party.

“Deficiency” means a defect, flaw, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a Deliverable to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

“Deliverables” mean the System, Software, Source Code, Documentation, hardware, goods, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Contractor (or any agent, contractor or subcontractor of Contractor) in connection with this Contract, and all related legal rights to own or use the same. Except as otherwise provided in this Contract, Deliverables shall include any and all: inventions, ideas, concepts, discoveries, methodologies, processes, applications, programs, software, source code, object code, and any other code, language or programming in any stage of development, improvements, modifications, enhancements, upgrades, releases, works-in-progress, techniques, know-how, designs, creative works and original works of authorship, work product, derivative works, Specifications, data, databases, compositions of matter, drawings, notes, plans, papers, graphics, copy, artwork, images, templates, forms, reports, studies, screen designs, utilities, routines, tests, devices, materials, documents, information, content, and all other tangible and intangible works, materials and property of any kind and nature that are related to the Deliverables or created, developed, produced, delivered, or provided by or on behalf of, or made available through, Contractor (or any agent, contractor, subcontractor, subsidiary or affiliate of Contractor) in connection with this Contract.

“Documentation” means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“Enhancements” shall mean any and all updates, upgrades, patches, additions, modifications or other enhancements made by Contractor with respect to the Software, any new Contractor releases of Software, and all changes to the Documentation and Source Code made by Contractor as a result of such Enhancements.

“Project” means the project to develop and implement the System and all services and Deliverables to be performed and provided by Contractor as described in a Statement of Work.

“Project Completion Date” means the date by which Contractor must complete all work and provide all Deliverables pursuant to any Statement of Work. For purposes of this Contract, the Project Completion Date will be specified in a Statement of Work.

“Project Plan” means the Project Plan attached hereto as Schedule B, as modified from time to time upon written agreement of the parties. The Project Plan is incorporated into this Contract by this reference as if fully set forth in this Contract.

“Software” means all software, programs, applications and components which comprise the System including all Third Party Software and any other software, programs, applications and components listed in any and all Statements of Work, in all forms, including Source Code and object code, all related Documentation and Enhancements, and all copies of the foregoing.

“Source Code” means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to any program, application or software (including the Software). Source Code includes all source code listings, instructions (including compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing or making modifications or enhancements to any source code, program, application or software (including the Software).

“Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Contract, the Documentation, the RFP (as defined below), and the Proposal (as defined below). Specifications shall include any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. Specifications shall include, without limitation, the existing and planned data model for the System, including all data elements, logical relationships and an entity relationship diagram, the functional requirements specifications and a functional design for the System, including descriptions of each System function and a functional hierarchy diagram, a definition of the existing and planned System modules, including a diagram showing the system design, interface design document including descriptions of all internal and external interfaces, final specifications of the System architecture, including hardware, software and operating system for all system components and interfaces, the detailed System security plan, detailed business and technical requirements, detailed system planning & design, functional hierarchy diagram, entity relationship diagram, data conversion and migration protocols, Software and hardware configuration plan. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.

“Statement of Work” means the all documents outlining Contractors approach to meeting the Scope of Work set forth in this Contract. Each Statement of Work will describe the Deliverables and services to be provided by Contractor and final delivery dates associated therewith.

“System” means all Software installed by Contractor pursuant to the terms of this Contract.

“Third Party” means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Contract.

“Third Party Software” means software, firmware and other programs licensed or acquired from Third Parties. Third Party Software shall be considered Software under this Contract.

5 SCOPE OF WORK AND SERVICE REQUIREMENTS

Services applicable to all Iowa Medicaid Enterprise (IME) contractors are set forth in Sections 5, 6, 7 and 8 of RFP MED-12-001 and are incorporated herein by reference. Service requirements and performance standards applicable to the system services component contractors of the IME are set forth in Section 7 of RFP MED-12-001 and are incorporated herein by reference.

5.1 Delivery

Contractor shall deliver to the Department all Deliverables as set forth in a Statement of Work. Contractor acknowledges and agrees that it shall deliver and provide to the Department all Source Code and Documentation related to any Software or other Deliverables that are created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Contractor under each Statement of Work, unless otherwise agreed to in writing by the Department. Contractor shall provide all such Deliverables in both hard copy and electronic format (acceptable to the Department) and as otherwise required and noted herein or in the applicable Statement of Work.

5.2 Third Party Software

Contractor shall recommend to the Department all Third Party Software necessary or desirable to be acquired to complete work and provide all Deliverables under a Statement of Work. At the Department's sole discretion, the Department will license such Third Party Software directly or require Contractor to license or sublicense the Third Party Software to or on behalf of the Department at the Department's expense. In the latter case, Contractor shall ensure that all Third Party Software or other materials provided pursuant to this Contract shall be licensed to the Department pursuant to a license agreement, the terms and conditions of which must be acceptable to the Department.

5.3 Hardware

Contractor represents and warrants with respect to all Third Party hardware procured or made available by or through the Contractor that, upon delivery to the Department: such hardware will be new and unused; title to the hardware will be free and clear of all liens, security interests, charges and encumbrances or other restrictions; the Department's use and possession of the hardware will not be interrupted or otherwise disturbed by any person or entity asserting a claim under or through Contractor; and the hardware will be free of any rightful claim of any Third Person or entity based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.

5.4 Department Not Required to Accept or Install Enhancements

Contractor shall not condition any of the Department's rights or Contractor's obligations under this Contract, or any other contract related to the System or the Software, on the Department accepting or installing any Enhancements or additional functionality provided by Contractor.

5.5 Manufacturers' Warranties

Contractor shall take all action necessary to ensure that the State and the Department shall be entitled to receive and enjoy all warranties, indemnities and other benefits associated with Third Party Software and Third Party hardware. At the Department's request, Contractor shall assign to the State and the Department all of the licensor's and manufacturer's warranties and indemnities pertaining to Third Party Software and Third Party hardware under any license or other agreement between Contractor and any Third Parties relating to any Third Party Software and Third Party hardware.

5.6 Error Correction

With respect to each notice from the Department to Contractor during the term of this Contract that notifies Contractor that any Deliverable delivered by Contractor (and previously accepted by the Department) contains or experiences a Deficiency, Contractor shall, at no cost to the Department, promptly (i) correct the Deficiency and repair the affected Deliverable, and (ii) provide the Department with all necessary materials with respect to such repaired or corrected Deliverable, including without limitation the provision of new Source Code, master program disks or other media acceptable to the Department and related Documentation.

6 TERM OF THE CONTRACT

The term of the Base Contract is January XX, 2012 through - July 31, 2018 with operations effective October 1, 2014.

The Contract Renewal Option Years will consist of three (3), one (1) year options. The Department may choose to renew the Contract for one (1) or more of the Contract Renewal Option Years. The Department shall have the sole discretion to exercise each renewal option. The Department shall use best efforts to notify the Contractor of the renewal decision ninety (90) days prior to the effective date.

7 PAYMENT TERMS AND COMPENSATION

7.1 Performance Based Contract

Contractor acknowledges that this is a fixed price performance based Contract and that the Contractor is obligated to perform all of the Contractor's Responsibilities and meet all of the Contractor Performance Standards in this Contract. DHS acknowledges that it is responsible for meeting all State Responsibilities in the RFP and this Contract.

The price for Design, Development and Implementation (DDI) and Operations is \$XXXXXXX.

The prices for DDI and Operations in the Base Term are:

SFY 2012	\$XXXXXX
SFY 2013	\$XXXXXX
SFY 2014	\$XXXXXX
SFY 2015	\$XXXXXX
SFY 2016	\$XXXXXX
SFY 2017	\$XXXXXX
SFY 2018	\$XXXXXX
SFY 2019	\$XXXXXX

The prices for the three (3) Renewal Option Years are:

SFY 2020	\$XXXXXX
SFY 2021	\$XXXXXX
SFY 2022	\$XXXXXX

In addition to the price identified herein, A) If the Contractor requested equipment and supplies in their Bid Proposal for the DDI the Department will provide the equipment and supplies if approved to the extent permitted under state procurement laws; B) During the DDI, Operations, and Renewal Option Years, if applicable, the Department will provide the Contractor the equipment and supplies specified in Attachment B of the contract.

Without limiting any other provision of this Contract, payment of the Contractor's compensation may, in the sole discretion of DHS, be tied to contract performance as follows:

Implementation Payment: Upon Department acceptance of the completed milestones, the Contractor may invoice the Department for each DDI milestone at the percentage rate indicated in the RFP Pricing Schedules N-1 (MMIS) and N-8 (POS). A 15% withhold will be applied to each milestone invoiced and payment of 85% of the value of the milestone will be paid to the Contractor. The remaining 15% will be held by the Department until CMS has notified the Department of the MMIS and POS systems certification at which time the Contractor may invoice the remaining amount to the Department.

Operations Payment: One twelfth (1/12) of the annual operations payment shall be earned monthly and invoiced the month following the month in which services are performed.

Final Payment: The Department may retain the final payment due Contractor pursuant to this Contract until Contractor has completed all Responsibilities as set forth in this Contract and the Department has fully closed out this Contract.

Reimbursable Expenses: There shall be no reimbursable expenses associated with this Contract separate from the compensation referred to in this section. Contractor shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Contract, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Contractor.

7.2 Taxes

The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the contract deliverables.

7.3 Invoice and Payment

The Contractor shall submit an invoice monthly for deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Department shall pay all approved invoices in arrears and in conformance with Iowa Law -. The Department may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver –in conformance with Iowa Law.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the Department for any deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

7.4 Withholding Payments

In addition to pursuing any other remedy provided herein or by law, the Department may withhold compensation or payments to Contractor, in whole or in part, without penalty to the Department or work stoppage by Contractor, in the event the Department determines that: (1) Contractor has failed to perform any of its duties or obligations as set forth in the Contract; or (2) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency. No interest shall accrue or be paid to Contractor or any compensation or other amounts withheld or retained by the Department under this Contract.

If the total amount withheld for failure to perform a requirement or meet a standard under this Contract is greater than one hundred dollars (\$100.00) for more than three (3) consecutive months during or after the term of the Contract, the Contractor shall forfeit five (5%) percent of the withheld amount to the Department.

In the event that Contractor owes the Department or the State any sum under the terms of this Contract, any other agreement, pursuant to a judgment, or pursuant to any law, the Department may set off such sum against any sum invoiced to the Department by Contractor in the Department's sole discretion unless otherwise required by law. Any amounts due to the Department as damages may be deducted by the Department from any money or sum payable by the Department to Contractor pursuant to this Contract or any other agreement between Contractor and the Department.

7.5 Overpayments to the Contractor

The Contractor shall pay to the Department the full amount of any erroneous payment or overpayment to the Contractor by the earlier of thirty (30) days after the Department's notification or the Contractor's discovery of the erroneous payment or overpayment.

8 TERMINATION

8.1 Termination for Cause by the Department

The Department may terminate this Contract upon written notice for the breach by Contractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Department's notice of breach or any subsequent notice or correspondence delivered by the Department to Contractor, provided that cure is feasible. In addition, the Department may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- a. Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFP or the Bid Proposal that is false, deceptive, or materially incorrect or incomplete;
- b. Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- c. Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- d. Contractor terminates or suspends its business;
- e. Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- f. Contractor has failed to comply with any applicable international, federal, state or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- g. The Department determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Department or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- h. The Department determines that the Contractor has breached a material term of the Business Associate obligations contained in this Contract.
- i. Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;
- j. Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- k. Any of the following has been engaged in by or occurred with respect to the Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:
 - 1. Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other

similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

2. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
3. Making an assignment for the benefit of creditors;
4. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract.

In the event of termination under this Subsection, the Department shall have the right to procure similar Contract services on the open market. The Contractor shall be liable for the difference between the original Contract price of services and the cost of such services from another bidder, and any other costs directly related to the Contractor's breach such as costs of competitive bidding, mailing, advertising, Department staff time and attorney's fees including reasonable time of the Attorney General's office. The Contractor shall have thirty (30) days after notice from the Department of the amount of such costs in which to submit payment unless an additional period of time is agreed to by the parties.

8.2 Notice of Default

If there is a default event caused by the Contractor, the Department shall provide written notice to the Contractor of the nature of the default. The Contractor shall have thirty (30) days, unless otherwise notified, after such notice to correct the problem(s) that resulted in the default notice. If the default is not corrected to the satisfaction of the Department within the specified time, the Department may immediately terminate the contract without additional written notice, or enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

8.3 Termination upon Notice

Following a ninety (90) day written notice, the Department may terminate this Contract in whole or in part without penalty and without incurring any further obligation to Contractor. Termination can be for any reason or no reason at all. The Department's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Department, and the Department shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

8.4 Termination Due to Lack of Funds or Change in Law

Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Department shall have the right to terminate this Contract (in whole or in part) without penalty and without any advance notice as a result of any of the following:

- a. The legislature or governor fail in the sole opinion of the Department to appropriate funds sufficient to allow the Department to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or
- b. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Department to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Department in its sole discretion; or
- c. If the Department's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or
- d. If the Department's duties, programs or responsibilities are modified or materially altered; or
- e. If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Department's ability to fulfill any of its obligations under this Contract.

The Department shall provide Contractor with written notice of termination pursuant to this section.

8.5 Limitation of the State's Payment Obligations

In the event of termination of this Contract for any reason by either party (except for termination by the Department pursuant to Section 8.1), the Department shall pay only those amounts, if any, due and owing to Contractor hereunder for deliverables actually and satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and for which the Department is obligated to pay pursuant to this Contract; provided however, that in the event the Department terminates this Contract pursuant to Section 8.4 the Department's obligation to pay Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. Notwithstanding the foregoing, this Section 8.5 in no way limits the rights or remedies available to the Department and shall not be construed to require the Department to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Department in accordance with the terms of this Contract. The Department shall not be liable, under any circumstances, for any of the following:

- a. The payment of unemployment compensation to Contractor's employees;
- b. The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

- c. Any costs incurred by Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;
- d. Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Contract; or
- e. Any taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

8.6 Contractor's Termination Duties

Upon receipt of notice of termination or upon request of the Department, Contractor shall:

- a. Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as the Department may require.
- b. Immediately cease using and return to the Department any property or materials, whether tangible or intangible, provided by the Department to Contractor.
- c. Cooperate in good faith with the Department and its employees, agents and independent contractors during the DDI period between the notification of termination and the substitution of any replacement service provider.
- d. Immediately return to the Department any payments made by the Department for deliverables that were not rendered or provided by Contractor.
- e. Immediately deliver to the Department any and all deliverables for which the Department has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

The Contractor's obligations under this section shall survive termination or expiration of this Contract.

8.7 Contractor's Default Cured by the Department

If, in the reasonable judgment of the Department, a default by the Contractor is not so substantial as to require termination, reasonable efforts to induce the Contractor to cure the default are unsuccessful and the default is capable of being cured by the Department or another resource without unduly interfering with continued performance by the Contractor, the Department may:

- a. Provide or procure the service to cure the default, in which event, the Contractor shall reimburse the Department for the reasonable cost of the service,
- b. Immediately terminate the Contract without additional written notice; or,
- c. Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

9 CONFIDENTIAL INFORMATION

9.1 Department's Confidential Information Relating to Members

The Contractor shall treat identifying information relating to Medicaid members that is obtained by it through performance under the Contract as confidential information to the extent that confidential information is protected under state and federal law and under the confidentiality requirements imposed by the Contract. The Contractor shall not use any confidential information in any manner except as necessary for the proper discharge of its obligation under the Contract. Identifying information shall include but not be limited to name, identifying number, symbol, or other identification particularly assigned to the member.

In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Department and cooperate with the Department in any lawful effort to protect the confidential information.

The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information. The Contractor shall be liable for any breach of this Subsection by its principals, officers, employees, agents or subcontractors and shall indemnify, defend, and hold harmless the Department from any and all liability resulting from such violation.

The Contractor shall provide to the Department a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address as appropriate, information conveyed in verbal, written and electronic formats.

The provisions of Section 9 shall survive the termination or expiration of the Contract.

9.2 Business Associate Agreement

Business Associate Agreement. The Contractor, acting as the Agency's Business Associate, performs certain services on behalf of or for the Agency pursuant to this Contract that require the exchange of information that is protected by the Health Insurance Portability and Accountability Act of 1996, as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) and the federal regulations published at 45 CFR parts 160 and 164. The Business Associate agrees to comply with the Business Associate Agreement Addendum (BAA), and any amendments thereof, as posted to the Agency's website:
<http://www.dhs.state.ia.us/Consumers/Health/HIPAA/Home.html>.

By signing this Contract, the Business Associate consents to receive notice of future amendments to the BAA through electronic mail. The Business Associate shall file and maintain a current electronic mail address with the Agency for this purpose. The Agency may amend the BAA by posting an updated version of the BAA on the Agency's website at: <http://www.dhs.state.ia.us/Consumers/Health/HIPAA/Home.html>, and providing the Business Associate electronic notice of the amended BAA. The Business Associate shall be deemed to have accepted the amendment unless the Business Associate notifies the Agency of its non-acceptance in accordance with the Notice provisions of the Contract within 30 days of the Agency's notice referenced herein. Any agreed alteration of the then current Agency BAA shall

have no force or effect until the agreed alteration is reduced to a Contract amendment that must be signed by the Business Associate, Agency Director, and the Agency Security and Privacy Officer.

9.3 Contractor's Confidential or Proprietary Information

The Contractor is urged not to bring confidential or proprietary information to the IME facility. If the Contractor does bring such information to the facility, the Contractor shall be the custodian of the information and shall establish its own procedures to protect the confidentiality of the information. Confidential and proprietary information shall be prominently identified. If during performance of the Contract the Department obtains information of the Contractor marked confidential or proprietary, the information shall be treated as confidential to the extent such information is determined confidential under Iowa Code Chapter 22 or other provision of law by a court of competent jurisdiction. In the event the Department receives a public request for such information, written notice shall be given to the Contractor seventy-two (72) hours prior to the release of the information to allow the Contractor to seek injunctive relief pursuant to Section 22.8 of the Iowa Code.

9.4 Use of Name or Intellectual Property

Contractor agrees it will not use the Department and/or State's name or any of their intellectual property, including but not limited to, any State, state Department, board or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the Department and/or the State.

9.5 No Dissemination of Confidential Information

No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by Contractor except as authorized by law and only with the prior written consent of the Department, either during the period of the Contract or thereafter. Any data supplied by the Department to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the Department. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Department. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the Department to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Department. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential information shall remain the property of the Department at all times.

9.6 Subpoena

In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Department and cooperate with the Department in any lawful effort to protect the confidential information.

9.7 Reporting of Unauthorized Disclosure

The Contractor shall immediately report to the Department any unauthorized disclosure of confidential information.

9.8 Qualified Service Organization

Contractor may review data that is protected by 42 C.F.R. part 2 and will, therefore, be a "qualified service organization" as that term is defined in 42 C.F.R. § 2.11. Contractor acknowledges that in receiving, storing, processing or otherwise dealing with any patient records from the Department, Contractor is fully bound by 42 C.F.R. part 2 and, if necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the regulations.

10 CHANGE OF SERVICE

10.1 Change Service Requests

The Department reserves the right to request from time to time changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract.

If the Department requests or directs the Contractor to perform any service or function that is consistent with and similar to the scope of services required to be performed by the Contractor under this Contract, the Contractor will proceed to make the change and will receive no additional compensation.

If the Department requests or directs the Contractor to perform any service or function that is a new service or function inconsistent with or dissimilar from the services required to be performed by the Contractor under the Contract, the Contractor will follow the procedure defined below.

If the Department requests or directs the Contractor to perform any service or function which the Contractor reasonably and in good faith believes is not included within the scope of services set forth in the Contract, then prior to performing such service or function, the Contractor shall promptly notify the Department in writing that it considers the service or function to be an "Additional Service" for which the Contractor should receive a Change Service Request. If the Contractor does not notify the Department, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing the service or function.

11 PROCEDURE

The Department shall submit a Change Service Request to the Contractor, which shall include a detailed description of the requested service, the priority of the service, a date the service is needed, and a date for submission of a proposal by the Contractor. In its proposal, the Contractor shall describe the procedure and schedule to be employed for the requested service and identify the number of hours necessary to complete the service by labor category and the associated cost to implement the change request. If necessary, the Contractor and the Department shall meet to discuss and clarify any issues related to the requested service. Upon written approval by the Department, the Contractor shall perform the requested service and receive payment according to the terms agreed to by the parties and based upon the rate specified in the Contractor's cost proposal.

If the Department does not accept the Contractor's proposal, the Department may withdraw or modify its Change Service Request. If the Department modifies its Change Service Request, the procedures set forth above shall apply.

11.1 No Agreement on Change Service Request

If the parties are unable to reach an agreement in writing within fifteen (15) days of receipt of the Contractor's proposal or modified proposal, the Contract Administrator shall make a determination of the compensation, procedure or schedule, and the Contractor shall proceed according to procedures set forth in the Contract Disputes Section of this Contract.

12 ASSESSMENT OF DAMAGES

The Department will notify the Contractor in writing of the proposed assessment of actual or liquidated damages. If the Contractor disputes the assessment, it must challenge the assessment in writing pursuant to the Contract Disputes Section of this Contract..

13 INSURANCE

13.1 Coverage Requirements

The Contractor shall maintain in effect, with an authorized insurer, at its own expense, the following types and amounts of insurance covering its work:

Type of Insurance	Limit	Amount
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$15 million
	Products –	
	Comp/Op Aggregate	\$15 million
	Personal injury	\$15 million
Excess Liability, umbrella form	Each Occurrence	\$5 million
	Aggregate	\$15 million
Errors and Omissions Insurance	Each Occurrence	\$2 million
Property Damage	Each Occurrence	\$2 million

Type of Insurance	Limit	Amount
	Aggregate	\$2 million
Workers Compensation and Employer Liability	As Required by Iowa law	

13.2 Coverage

All insurance policies required by the Contract shall be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy.

The Contractor's insurance shall insure against any loss or damage resulting from work performed under the Contract. All insurance policies shall remain in full force and effect for the entire term of the Contract. Each policy shall name the State of Iowa and the Department as an additional insured or loss payee, as applicable. The Contractor and any subcontractor performing work under the Contract shall provide certificates of the required insurance to the Department at the time of execution of the Contract or at a time mutually agreeable to the parties. The certificates shall be subject to approval by the Department. Acceptance of the certificates shall not relieve the Contractor of any obligation under the Contract.

The Contractor shall obtain a waiver of any subrogation rights the insurance carrier may have against the Department or the State of Iowa and the waiver shall be indicated on the certificate of coverage.

13.3 Subcontractors

The Contractor shall require any subcontractor to purchase and maintain similar policies of insurance as described in this section.

13.4 Notice of Cancellation

The insurer shall state in the certificate that no cancellation of the insurance will be made without at least a thirty (30) day prior written notice to the Department.

14 PERFORMANCE BOND

14.1 Implementation

The Contractor will not be required to post a performance bond or an irrevocable letter of credit to the Department during DDI.

14.2 Operations (dates and years change)

The Contractor shall post a performance bond or an irrevocable letter of credit acceptable to the Department for the Operations phase. The amount shall be based on a declining graduated formula adjusted and posted with the Department on an annual basis. Beginning on October 1, 2014, the amount shall be equal to twenty percent (20%) of the total operations price for the five (5) Base Contract Years (as described in Section 6.0), without regard to the Contract Renewal

Option Years [e.g. (20%) x (the sum of costs for three (3) years)]. Each year thereafter, the amount of the bond or irrevocable letter of credit shall be calculated by multiplying by the number of years remaining in the base contract times twenty percent (20%) of the total cost of the contract for the remaining years. [E.g. 3 x 20%; 2 x 20% etc.] Should the Department choose to extend the contract by exercising any or all of its three (3) one (1) year options, the bond or irrevocable letter of credit shall be calculated by multiplying twenty percent (20%) of the cost for that option year. The surety shall be in force from the beginning of the Operations Phase until the Contract is terminated or expires and shall be delivered to the Department at the beginning of the Operations Phase.

A surety authorized to do business in Iowa that is acceptable to the Department shall issue the performance bond or irrevocable letter of credit. The performance bond or irrevocable letter of credit shall provide funds to the Department for any liability, loss, damage, or expense as a result of the Contractor's failure to perform fully and completely all requirements of the Contract. Such requirements include, but are not limited to, the Contractor's obligation to indemnify the Department under circumstances described in the Contract, and the Contractor's obligation to perform the services required by the Contract throughout the entire term of the Contract.

15 INDEMNIFICATION

15.1 General Indemnification

The Contractor shall defend, indemnify and hold harmless the State of Iowa, the Department, its employees and agents from any and all liabilities, damages, settlements, penalties, judgments, fines and claims, and all related costs and expenses, including expert fees, reasonable value of time incurred by the Attorney General's office, and the cost and expenses and reasonable attorney's fees of other counsel required to defend the State of Iowa or Department, related to or arising from:

- a. Any material breach of this Contract; or
- b. Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor; or
- c. The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor; or
- d. Any failure by the Contractor to comply with the Compliance with the Law provision of this Contract; or
- e. Any infringement of any copyright, trademark, patent, tradename, or other intellectual property right; or
- f. Any failure by the Contractor to adhere to the confidentiality provisions of this Contract.

15.2 Patent/Copyright Infringement Indemnification

The Contractor shall defend, indemnify and hold harmless the State of Iowa, the Department, its employees and agents from any and all liabilities, damages, settlements, penalties, judgments, fines and claims, and all related costs and expenses, including reasonable attorney's fees of the Attorney General's office, and the reasonable attorney's fees of other counsel required to

defend the Department, incurred in connection with any action or proceeding based on a claim that any piece of equipment, software, commodity, or service infringes any United States or foreign patent, copyright, trademark, trade secret supplied or used by the Contractor or any subcontractor to perform this Contract, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service, or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or operation thereof, become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense and at the Department's sole discretion.

- a. Procure for the Department the right to continue using the equipment, software, commodity, or service, or, if such option is not reasonably available to the Contractor,
- b. Replace or modify the same with equipment, software, commodity, or service of equivalent function and performance so that it no longer infringes, or, if such option is not reasonably available to the Contractor or,
- c. Accept its return by the Department with appropriate credits to the Department against the Contractor's charges and reimburse the Department for any losses or costs incurred as a consequence of the Department ceasing its use and returning it.

The above remedies shall be in addition to and not exclusive of other remedies provided by this agreement or by law.

The indemnification obligations contained in Section 14 shall survive the termination of this Contract.

16 OPERATING SYSTEMS AND SOFTWARE APPLICATIONS

16.1 Software and Ownership

The State and the United States Department of Health and Human Services shall have all rights required by 45 CFR 95.617.

16.2 Operating Systems, Applications Software and Utilities

Any Contractor-owned proprietary software installed by Contractor pursuant to this Contract shall be identified in writing to the Department before Contractor signs this Contract. Any such installed proprietary software shall be subject to the terms and conditions of the Software License Agreement and the Maintenance Agreement attached hereto as Attachments A and B.

16.3 Third Party Software

If the Contractor is using another party's software, upon final acceptance, the Contractor shall grant the Department a non-exclusive, perpetual license to use the third party software and its updated documentation for the Department's internal business purposes. The licenses will continue until the Department permanently discontinues the use of the third party software. The

terms in any license for third party software shall be consistent with the requirements of this Subsection. In the event of a conflict between the terms of any such license and this Contract, this Contract shall take precedence and supersede such license terms.

Prior to utilizing any third party software product that may be included as part of a software deliverable to the Department, the Contractor shall provide to the Department copies of the license agreement from the licensor of the third party software to allow the Department to pre-approve the license agreement which must, at a minimum, provide the Department with necessary rights consistent with the IME needs.

17 EQUIPMENT & SOFTWARE INSTALLATION AND OPERATION

Installation for all equipment, software, applications and interfaces will occur as described in the contractor's work plan. Any installations done by the Contractor or its designated agent shall be conducted by experienced and trained staff and shall not invalidate or void any manufacturers' warranties. Installations shall not interfere with the execution of any other software component, application or interface.

The Contractor shall conduct its installation services so as to minimize interference with normal activities of the Department and shall keep the site safe and clean at all times. The Contractor will restore the site to a condition no less finished than prior to the initiation of the installation. Upon completion of installation Contractor will leave the site clean and free from all materials, tools and equipment not required after installation. The Contractor will be responsible for safety conditions in the areas of work performance that it controls.

The Contractor shall have access to the system, in whole and in part, to provide services under the Contract, subject to the security regulations existing at the site and regulations that may be required because of the nature of the system.

The Contractor shall continuously protect the system from damage, destruction, or loss caused by the acts or omissions of its staff, and shall protect the Department's real and personal property from damage arising from the acts or omissions of its staff in connection with installation and operation of the system. The Contractor shall be responsible for any loss, destruction, or damage to the Department's property, which results from or is caused by the Contractor's acts or omissions.

The Contractor shall deliver to the Department and maintain and replace documentation as described in the individual RFP component sections. This will include, as applicable, system documentation, user documentation, software development documentation and disaster recovery and back-up planning documentation. The documentation shall be provided in electronic and hardcopy form.

18 WARRANTIES

18.1 System Warranty

The Contractor represents and warrants that the system and software delivered under the Contract shall be free from defect and capable of performing the Contract services when operated by the Department. The Contractor agrees to correct errors discovered in the design and installation of the software not due to the fault or negligence of the Department. Any

enhancement or other changes that may be undertaken during the performance of the Contract will be covered by this warranty. The Contractor represents and warrants that no “anti-use” devices have been or will be installed in the software. The “anti-use” warranty shall survive termination of the Contract.

18.2 Deliverables

The Contractor represents and warrants that the deliverables (in whole and in part) shall:

- a. Be free from material deficiencies; and
- b. Meet, conform to and operate in accordance with all specifications and in accordance with this Contract during the term of this Contract. During the term of this Contract, the Contractor shall, at its expense, repair, correct or replace any deliverable that contains or experiences material deficiencies or fails to meet, conform to or operate in accordance with specifications within five (5) business days of receiving notice of such deficiencies or failures from the Department or within such other period as the Department specifies in the notice. In the event Contractor is unable to repair, correct or replace such deliverable to the Department's satisfaction, Contractor shall refund the fees or other amounts paid for the deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Department shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Department with questions, problems and concerns about the deliverables, to inform the Department promptly of any known deficiencies in any deliverables, repair and correct any deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such deliverable may have been accepted by the Department, and provide the Department with all necessary materials with respect to such repaired or corrected deliverable.
- c. **Professional and Workmanlike Manner.** The Contractor represents, warrants and covenants that all services to be performed under this Contract shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Department notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Department, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, Contractor shall reimburse the Department any fees or compensation paid to Contractor for the unsatisfactory services.
- d. **Compliance with Law Warranty.** The Contractor represents and warrants that the deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

18.3 Intellectual Property Rights Warranty

Contractor represents and warrants that:

- a. All deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the deliverables to the Department hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Department hereunder or under any license agreement related hereto without violating any rights of any third party;
- b. Contractor has not previously and will not grant any rights in any deliverables to any third party that are inconsistent with the rights granted to the Department herein;
- c. The Department shall peacefully and quietly have, hold, possess, use and enjoy the deliverables without suit, disruption or interruption;
- d. The deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such deliverables); and the Department's use of, and exercise of any rights with respect to, the deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. Contractor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the deliverables. Contractor shall inform the Department in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Contractor shall, at the Department's request and at the Contractor's sole expense:
 - a. Procure for the Department the right or license to continue to use the deliverable at issue;
 - b. Replace such deliverable with a functionally equivalent or superior deliverable free of any such infringement, violation or misappropriation;
 - c. Modify or replace the affected portion of the deliverable with a functionally equivalent or superior deliverable free of any such infringement, violation or misappropriation; or
 - d. Accept the return of the deliverable at issue and refund to the Department all fees, charges and any other amounts paid by the Department with respect to such deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the State and its officers, directors, employees, officials and agents as provided in the Indemnification section of this Contract, including for any breach of the representations and warranties made by Contractor in this section. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Department and shall survive termination of this Contract

18.4 Intellectual Property

- a. **Ownership and Assignment of Other Deliverables.** Contractor agrees that the State and Department shall become the sole and exclusive owners of all deliverables. Contractor hereby irrevocably assigns, transfers and conveys to the State and the Department all right, title and interest in and to all deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. Contractor represents and warrants that the State and the Department shall acquire good and clear title to all deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the deliverables and shall not use any deliverables, in whole or in part, for any purpose, without the prior written consent of the Department and the payment of such royalties or other compensation as the Department deems appropriate. Unless otherwise requested by Department, upon completion or termination of this Contract, Contractor will immediately turn over to Department all deliverables not previously delivered to Department, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of Department.
- b. **Waiver.** To the extent any of Contractor's rights in any deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the deliverables.
- c. **Further Assurances.** At the Department's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the Department to establish, perfect or protect the State's rights in and to the deliverables and to carry out the assignments, transfers and conveyances set forth in Section 17.3 and 17.4.
- d. Notwithstanding anything to the contrary in this Subsection, the Contractor shall be free to use and employ its general skills, know-how and expertise and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing services under the Contract, so long as it acquires and applies such information without disclosure of any confidential or proprietary information of the Department and without any authorized use or disclosure of work product developed in connection with the Contract.
- e. Contractor acknowledges and agrees that the State and the Department, as owners and assignees of the State-Owned Deliverables, shall have all rights incident to complete ownership, and may, without limitation: (i) obtain, secure, file and apply for any legal protection necessary to secure or protect any rights in and to the State-Owned Deliverables, including the prosecution and issuance of letters patent, copyright registrations, and other analogous protection, and any extensions or renewals with respect thereto; (ii) adapt, change, modify, edit or use the State-Owned Deliverables as the Department or the State sees fit, including in combination with the works of others, prepare derivative works based on the State-Owned Deliverables, and publish, display, perform and distribute throughout the world any State-Owned Deliverable(s) in any

medium, whether now known or later devised, including, without limitation, any digital or optical medium; and (iii) make, use, sell, license, sublicense, lease, or distribute the State-Owned Deliverables (and any intellectual property rights therein or related thereto) without payment of additional compensation to Contractor or any Third Party.

- f. In the event that a Deliverable is intellectual property owned by a Third Party “Third Party Intellectual Property”), Contractor shall secure on behalf of and in the name of the State and the Department, an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on the Department’s and the State’s behalf. In the event that a Deliverable created by Contractor under this Contract is a derivative work based upon Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on behalf of and in the name of the State and the Department an irrevocable, nonexclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of such Third Party Intellectual Property, and to authorize others to do the same on the State’s and the Department’s behalf. All such Third Party Intellectual Property must be identified by Contractor before signing of this Contract, and all such rights to Third Party Intellectual Property must be secured using the State’s Software License Agreement and Maintenance Agreement (Attached hereto as Attachments A and B, respectively) or using a form acceptable to the Department. Alternate agreement forms must be identified and agreed to before this Contract is signed.

18.5 Publications

Prior to completion of all services required by this Contract, Contractor shall not publish in any format any final or interim report, document, form or other material developed as a result of this Contract without the express written consent of the Department. Upon completion of all services required by this Contract, Contractor may publish or use materials developed as a result of this Contract, subject to confidentiality restrictions, and only after the Department has had an opportunity to review and comment upon the publication. Any such publication shall contain a statement that the work was done pursuant to a contract with the Department and that it does not necessarily reflect the opinions, findings and conclusions of the Department.

18.6 Authorization

Contractor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Contract and has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

18.7 Millennium and Leap Year Warranty

The Contractor represents and warrants that any systems hardware and software which is developed and delivered under the Contract shall accurately process date data, including, but not limited to, calculating, comparing and sequencing from, into between, and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the documentation provided by the Contractor.

18.8 Compatibility Warranty

The Contractor represents and warrants that the system and software which is purchased or developed and delivered under the Contract shall perform as a system with hardware or software currently owned or used by the Department, and the system and software shall, at a minimum, process, transfer, sequence data, or otherwise interact with the other components or parts of the Department's system to exchange accurate data.

18.9 Remedies

The remedies available to the Department for a breach of warranty under this section includes: repair or replacement of non-compliant software at no cost to the Department and any other remedies available to the Department under the Contract.

18.10 Obligations Owed to Third Parties

The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Department will not have any obligations with respect thereto.

18.11 Warranties Implied by Law

Warranties made by the Contractor in this Contract, whether: (a) this Contract specifically denominates the Contractor's promise as a warranty; or (b) the warranty is created by the Contractor's affirmation or promise, by a description of the deliverables to be provided, or by provision of samples to the Department, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the deliverables provided by the Contractor.

The provisions of section 17 apply during the term of this Contract and any extensions or renewals thereof unless noted otherwise.

18.12 Business Requirements

Contractor represents and warrants that it is fully aware of the Department's business requirements and intended purposes and uses for the Deliverables as set forth herein and in the RFP, and the Deliverables shall satisfy such requirements in all material respects and are fit for such intended purposes and uses.

18.13 Security Standards

Contractor covenants that it will comply with and adhere to all Department and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and that Contractor will take all precautions necessary to prevent unauthorized access to the Department's and the State's systems, networks, computers, property, records, data, and information. In addition, Contractor covenants and warrants that Contractor's personnel shall comply with the Department's and the State's security regulations

including any procedure which the Department's personnel, contractors and consultants are normally asked to follow. Contractor agrees to cooperate fully and to provide any assistance necessary to the Department in the investigation of any security breaches that may involve Contractor or Contractor's personnel.

18.14 Maintenance of Documentation

Contractor represents, warrants and covenants that for the duration of the Contract, all Documentation will accurately reflect the operation of any Deliverable(s) to which the Documentation pertains and will enable the Department to use and maintain such Deliverable(s) for their intended purposes.

19 LIABILITIES

19.1 Other Department Contractors

The Contractor acknowledges and agrees that the Department shall not be responsible for or liable to the Contractor or its subcontractor(s) for any damages that may be suffered by the Contractor as a result of any act or omission of any other contractor of the Department.

20 PROJECT MANAGEMENT

20.1 Meetings with Department

Key staff of the Contractor and any subcontractor responsible for the administration of the Contract shall be accessible to Department staff and shall meet with Department staff and staff of other contractors as requested. Department staff shall be available to the Contractor during normal business hours.

20.2 State Staff

State staff will be available to the Contractor during regular business hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding State holidays.

IME business hours are 7:30 a.m. to 5:00 p.m., Monday through Friday. On-site contractor staff will observe the same IME business hours including State holidays.

20.3 Contract Compliance and Monitoring

The Contractor and any subcontractor shall meet with the Department and provide information as requested to review the Contractor's compliance with the terms of the Contract and level of performance. The Department or the Department's duly authorized and identified agents or representatives of the state and federal governments shall have the right to access any and all information pertaining to the Contract wherever the information is located and is not limited only to locations at which the Contractor is performing services under the Contract. In addition, the Department may conduct site visits, conduct quality control reviews, review Contract compliance, assess management controls, assess the Contract services and activities, and

provide technical assistance. The Department agrees to reasonable security and confidentiality requirements of the Contractor that are consistent with any security and confidentiality requirements under the Contract.

20.4 Records Retention and Access

The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Department throughout the term of this Contract and for a period of at least seven (7) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the -seven (7) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. The Contractor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code § 614.1(9). Client records, which are non-medical, must be maintained for a period of seven (7) years.

The Contractor shall permit the Department, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Department reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Contract require compliance with OMB Circular A-87, A-110, or other similar provision addressing proper use of government funds, the Contractor shall comply with these additional records retention and access requirements:

- a. Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third party in-kind (property or service) contributions must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income and third-party reimbursements.
- b. The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.
- c. The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Department.
- d. The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.

e. The Contractor shall retain all non-medical and medical client records for a period of seven (7) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code § 614.1(9).

Destruction of Confidential Information. At the conclusion of this Contract, the Agency may require the Contractor to return Confidential Information. If not required to return such information, and in accordance with any retention requirements in this Records Retention and Access Section or any applicable provision of law or regulation, the Contractor will destroy all Confidential Information in such a manner as to render the information incapable of being reconstructed or recovered. If return or destruction is not feasible, the Contractor will provide the Agency with the reason(s) in writing that make the return or destruction of such Confidential Information infeasible.

If the Agency provides written permission for the Contractor to retain the Confidential Information, the Contractor will extend the protections of this Contract to the Confidential Information and limit any further uses or disclosures.

21 AUDITS

Local governments and non-profit sub-recipient entities that expend \$500,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Circular A-133 "Audit of States, Local Governments, and Non-Profit Organizations." If Contractor is obligated by law to have such an audit conducted, a copy of the final audit report shall be submitted to the Department if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. If an audit report is not required to be submitted per the criteria above, the sub-recipient must provide written notification to the Department that the audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Department. See A-133 Section 21 for a discussion of sub-recipient versus vendor relationships. Contractor shall provide the Department with a copy of any written audit findings or reports, whether in draft or final form, within 24 hours following receipt by the Contractor. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

Reimbursement of Audit Costs. If the Auditor of the State of Iowa notifies the Agency of an issue or finding involving the Contractor's noncompliance with laws, rules, regulations, and/or contractual agreements governing the funds distributed under this Contract, the Contractor shall bear the cost of the Auditor's review and any subsequent assistance provided by the Auditor to determine compliance. The Contractor shall reimburse the Agency for any costs the Agency pays to the Auditor for such review or audit.

22 STATUS OF CONTRACTOR

22.1 Independent Contractor

The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State or any Department, division or department of the State simply by virtue of

work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the Department or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Department will not withhold taxes on behalf of the Contractor (unless required by law).

22.2 Subcontracts

Contractor must secure from the Department prior written approval for any subcontract entered into by the Contractor for requirements of the Contract. A subcontract shall not affect payment by the Department to the Contractor or the distribution of payments. All subcontracts shall be in writing and copies shall be provided to the Department upon request. The terms and conditions imposed on the Contractor under the Contract shall also apply to any subcontractor and shall be incorporated into any subcontract. The Contractor shall be responsible for all work performed under the Contract, whether or not subcontractors are used. A subcontract shall not relieve the Contractor of any responsibility for performance under the Contract.

The Contractor shall notify the Department of any planned use of subcontractors. This notice shall include, at a minimum, the name and address of each subcontractor, the scope of work to be performed by each subcontractor, the subcontractor's qualifications and the estimated dollar amount of each subcontract. Collectively, subcontractors are not to perform more than 40% of the work contracted by this Contractor. A representative of a subcontractor may be required to meet regularly with the Department. If during the course of the subcontract period the Contractor or subcontractor wishes to change or revise the subcontract, prior written approval from the Department shall be required. The Department shall respond to any request for approval or consent in a timely manner. The Department shall have the right to request the removal of a subcontractor for good cause.

23 GENERAL PROVISIONS

23.1 Assignment and Delegation

Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Department. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Department. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Contractor under this Contract.

23.2 Compliance with the Law

The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when providing deliverables under this Contract, including without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors or suppliers. The Contractor may be required to provide a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients. Failure to comply with this provision may cause this contract to be cancelled, terminated or suspended in

whole or in part and the Contractor may be declared ineligible for future state contracts or be subject to other sanctions as provided by law or rule. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. The Contractor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 Iowa Administrative Code chapter 4.

23.3 Procurement

To the extent the contractor is required to by state or federal Contractor shall use procurement procedures that comply with all applicable state and federal procurement standards to extent required by law.

23.4 Non-Exclusive Rights

This Contract is not exclusive. The Department reserves the right to select other contractors to provide deliverables similar or identical to those described in the scope of work during the term of this Contract.

23.5 Amendments

This Contract may be amended in writing from time to time by mutual consent of the parties. Amendment are only permitted through a formal contract amendment and not by any form of letter agreement or language included on invoices or any other transactional documents.

23.6 Successors in Interest

All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

23.7 Third Party Beneficiaries

There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State and the Contractor.

23.8 Choice of Law and Forum

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall be brought and maintained solely in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Department or the State of Iowa.

23.9 Immunity from Liability

Every person who is a party to the Contract is hereby notified and agrees that the State, the Department, and all of their employees, agents, successors, and assigns are immune from

liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

23.10 Public Records

The laws of the State of Iowa require procurement records to be made public unless otherwise provided by law.

23.11 Knowledge of the Iowa Medicaid Program

The Contractor shall be knowledgeable in all aspects of the operations of the Iowa Medicaid program and applicable federal and state laws, regulations, rules and policies, including without limitation those relating to state and federal reporting and proposed changes to any of the aforesaid being considered at the state or federal level. The Contractor acknowledges that the Department relies on the Contractor's knowledge of Medicaid.

23.12 Supersedes Former Contracts or Agreements

This Contract supersedes all prior contracts or agreements between the Department and the Contractor for the deliverables to be provided in connection with this Contract.

23.13 Counterparts

The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

23.14 Certification Regarding Sales and Use Tax

By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Contractor also acknowledges that the Department may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Department or its representative filing for damages for breach of contract.

23.15 Right to Address the Board of Directors or Other Managing Entity

The Department reserves the right to address the Contractor's board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Department determines appropriateness.

23.16 Repayment Obligation

In the event that any State and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Department for the full amount of any claim disallowed and for all related penalties incurred as a result of Contractor's negligent performance under this Contract. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

23.17 Cumulative Rights

The various rights powers, options, elections, and remedies of either party provided in the Contract shall be construed as cumulative and not exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law.

23.18 Headings or Captions

The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs.

23.19 Integration

The Contract represents the entire Contract between the parties, and neither party is relying on any representation that may have been made which is not included in the Contract.

23.20 Delays or Impossibility of Performance

Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor's ability to deliver the deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused

from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a “force majeure” as defined in this Contract. If a “force majeure” delays or prevents the Contractor’s performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Department. The party seeking to exercise this provision and not perform or delay performance pursuant to a “force majeure” shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

23.21 Turnover Responsibilities

The Turnover phase is the period between when the Department anticipates it will seek bids for a new contract and the termination or expiration date of this Contract. During this phase, the Contractor agrees to:

- a. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of work under the Contract as directed by the Department;
- b. Negotiate an extension of the Contract, if requested by the Department;
- c. Cooperate with the Department and any and all incoming subcontractor(s) to ensure a smooth turnover of services;
- d. Work with the Department and any and all incoming contractor(s) to create and implement a Turnover plan;
- e. Ensure that appropriate staff levels are maintained to manage daily responsibilities under the Contract, including cooperation with Turnover activities;
- f. Comply with the Department’s instructions for the timely transfer of any work being performed by the Contractor under the Contract to the Department and any and all incoming contractor(s);
- g. Provide an updated and current listing of all files, software, applications, interfaces, documentation, Job Control Language (JCL), work flow and other information requested by the Department.
- h. To the extent that title or license has not already been transferred, transfer title or license to any work product, operating systems and software applications, including proprietary software used during the course of the Contract,

The Contractor will accomplish the above events or deliver requested materials to the Department within the timeframe specified by the Department. Payment will not be made for turnover services except as part of the fixed price for the Operational Phase of the Contract.

23.22 Conflict of Interest

Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Department that is a conflict of interest. No employee, officer or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code chapter 68B shall apply to this Contract. If a conflict of interest is

proven to the Department, the Department may terminate this Contract, and the Contractor shall be liable for any excess costs to the Department as a result of the conflict of interest. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any potential, real, or apparent conflict of interest to the Department.

23.23 Joint and Several Liability

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

23.24 Obligations Beyond Contract Term

The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All continuing obligations of the Department and Contractor incurred or existing under the Contract as of the date of termination or cancellation shall survive the termination or cancellation.

23.25 Severability

If any provision of the Contract is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the validity or enforceability of any other part or provision of the Contract.

23.26 Solicitation

The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit and secure the Contract for commission, percentage or contingency accepting bona fide employees or selling agents retained for the purpose of securing business.

23.27 Time is of the Essence

Time is of the essence with respect to the Contractor's performance of the terms of this Contract. Contractor shall ensure that all personnel providing deliverables to the Department are responsive to the Department's requirements and requests in all respects.

23.28 Utilization of Minority Business Enterprises

The Contractor acknowledges it is the policy of the State of Iowa that minority business enterprises shall have the maximum, practicable opportunity to participate in the performance of state contracts. Where feasible or applicable under the Contract, the Contractor agrees to make a reasonable effort to subcontract with minority business enterprises.

23.29 Utilization of Small Business

The Contractor acknowledges it is the policy of the State of Iowa that a fair portion of its purchases and contractors for supplies and services be placed with small businesses. Where feasible or applicable under the Contract, the Contractor agrees to make a reasonable effort to subcontract with small businesses.

23.30 Waiver

Except as specifically provided in a waiver signed by the Department and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right with respect thereto.

23.31 Certification of Compliance with Pro-Children Act of 1994

Contractor must comply with Public Law 103-227, Part C Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act). This Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the deliverables are funded by federal programs either directly or through State or local governments. Federal programs include grants, cooperative agreements, loans or loan guarantees, and contracts. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities (other than clinics) where WIC coupons are redeemed.

The Contractor further agrees that the above language will be included in any sub-awards that contain provisions for children's services and that all sub-grantees shall certify compliance accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1000 per day.

23.32 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

By signing this Contract, the Contractor is providing the certification set out below:

- a. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies

available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

b. The Contractor shall provide immediate written notice to the person to whom this document is submitted if at any time the Contractor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

c. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principle, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this document is submitted for assistance in obtaining a copy of those regulations.

d. The Contractor agrees by submitting this document that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Agency or agency with which this transaction originated.

e. The Contractor further agrees by submitting this document that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

f. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

g. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

h. Except for transactions authorized under paragraph d of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the Agency or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

1. The Contractor certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

2. Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this document.

23.33 Certification Regarding Lobbying

Contractor certifies as follows:

- a. No federal appropriated funds have been paid or will be paid on behalf of the sub-grantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, an officer or employee of the Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant loan or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, the applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.A. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

23.34 Certification Regarding Drug Free Workplace

- a. Requirements for Contractors Who are Not Individuals. If Contractor is not an individual, by signing below Contractor agrees to provide a drug-free workplace by:
 1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 2. Establishing a drug-free awareness program to inform employees about:
 - i. The dangers of drug abuse in the workplace;
 - ii. The person's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. The penalties that may be imposed upon employees for drug abuse violations;

3. Making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by subparagraph (a);
 4. Notifying the employee in the statement required by subparagraph (a), that as a condition of employment on such contract, the employee will:
 - i. Abide by the terms of the statement; and
 - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
 5. Notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;
 6. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by 41 U.S.C. § 703; and
 7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (i), (ii), (iii), (iv), (v), and (vi).
- b. Requirement for individuals. If Contractor is an individual, by signing below Contractor agrees to not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.
- c. Notification Requirement. Contractor shall, within 30 days after receiving notice from an employee of a conviction pursuant to 41 U.S.C. § 701(a)(1)(D)(ii) or 41 U.S.C. § 702(a)(1)(D)(ii):
1. Take appropriate personnel action against such employee up to and including termination; or
 2. Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency.

23.35 Contract Disputes

Except as provided herein, the Contract is not subject to arbitration. The Contract Administrator will decide any dispute concerning performance of this Contract and put that decision in writing and serve a copy on the Contractor. If multiple contractors are involved in compounding a default, liability will be apportioned by the Department. The Contract Administrator's decision will be final unless within ten (10) days of the mailing of the decision the Contractor files with the Director of the Department a written request to review the decision, which identifies all issues being disputed. The Director, or his designee, who may be the Medicaid Director, shall review the Contractor's request to review the Contract Administrator's decision and issue a written decision within ten (10) days of receipt of the review request. The decision of the Director shall be final for purposes of Iowa Code Chapter 17A. Pending final determination of any dispute, the Contractor will proceed diligently with the performance of this Contract and in accordance with the Contract Administrator's direction. The Contractor's failure to follow the procedure set out above will be deemed waiver of the Contractor's claim.

23.36 Contingency

The Contract is subject to review and approval by the Centers for Medicare and Medicaid Services (CMS). The Department shall have the right to modify the Contract at any time to comply with CMS requirements.

23.37 Not a Joint Venture

Nothing in this Contract shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Contract.

23.38 Material Breaches

The references in this Contract to specific material breaches of this Contract shall not be construed as implying that other breaches of this Contract are not material.

23.39 Further Assurances and Corrective Instruments

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

23.40 Right of Inspection

Contractor shall allow the Department, or anyone designated by the Department, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Contract.

23.41 Title to Property

Title to all property (including Department Property) furnished by the Department and/or the State to Contractor to facilitate the performance of this Contract shall remain the sole property of the Department and/or the State. All such property shall only be used by Contractor for purposes of fulfilling its obligations under this Contract and shall be returned to the Department upon the earliest of completion, termination, or cancellation of this Contract or at the Department's request. Contractor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Contract, Contractor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Contractor, for which Contractor has been reimbursed or paid by the Department under this Contract, shall pass to and vest in the Department and/or State, except as otherwise provided in this Contract.

23.42 Award of Related Contracts

The Department may undertake or award supplemental or successor agreements for work related to this Contract. Contractor shall cooperate fully with other contractors, consultants and other persons who may be engaged by the Department or the State in connection with this Contract. Contractor will ensure that any of its contractors or subcontractors that have been approved by the Department will abide by this provision.

23.43 Sovereign Immunity

The Department and the State do not waive sovereign immunity by entering into this Contract and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Contract.

23.44 Assignment of Third Party Warranties

Contractor hereby assigns and shall assign to the Department any and all existing and future warranties, indemnities and other benefits obtained or available from the licensor of any Third Party software or the manufacturer of any equipment or replacement parts provided or otherwise furnished in connection with this Contract.

23.45 Attorney's Fees and Expenses

In the event Contractor defaults in any obligations under this Contract, Contractor shall pay to the Department all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office, expert fees, costs of the action, as well as expenses and attorney fees of other counsel retained by or on behalf of the Department) incurred by the Department in enforcing this Contract or any of its rights and remedies with respect thereto.

23.46 Care of Property

Contractor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and Department Property furnished by the Department for Contractor's use in connection with the performance of the Contract. Contractor shall exercise its best efforts to prevent damage to all such property and shall, at the Department request, restore damaged property to the extent possible to its condition prior to the damage at the sole expense of Contractor. Such restoration shall be complete when judged satisfactory by the Department. In addition, at the Department's request, Contractor will reimburse the Department for any loss or damage to such property caused by Contractor, or any agent, contractor or subcontractor employed or utilized by Contractor. Contractor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of the Department and the State. Contractor shall obtain the prior advance written approval from the Department prior to Contractor's use (in advertising, publicity, public contract bidding, or otherwise) of the name, marks or intellectual property rights of the Department or the State.

23.47 Obligations Beyond Contract Term

This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. Contractor's obligations under this Contract, which by their nature would continue beyond the termination of this Contract shall survive termination of this Contract and/or termination of any Maintenance/Support agreement associated with this Contract.

23.48 Execution

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Contract and have caused their duly authorized representatives to execute this Contract.

[Name of contractor]

By: _____ Date: _____

Name: _____

Title: _____

Federal Tax Identification Number: _____

State of Iowa, Department of Human Services

By: _____

Name: _____

Title: _____

Attachment A

Contract Attachment A

Software License Agreement

This Software License Agreement (the “Agreement”) is effective as of _____ (“Effective Date”), and is made by and between [name of licensor], (“Licensor”) and the State of Iowa (“State”), acting by and through the Iowa Department of Human Services (“Agency”) (the State and the Agency shall be referred to individually and collectively as “Licensee”).

SECTION 1. DEFINITIONS

In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:

“Authorized Contractors” mean independent contractors, consultants or other Third Parties who are retained or hired by Licensee or a Governmental Entity to maintain, modify, support or enhance the Software or to otherwise assist Licensee or Governmental Entities with their use of the Software consistent with the rights granted herein.

“Confidential Information” means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “disclosing party”) to the other party (a “receiving party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the information by the disclosing party to the receiving party; (ii) was known to the receiving party prior to the disclosure of the information by the disclosing party; (iii) was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the receiving party in violation of this Agreement or in breach of any other agreement with the disclosing party; (v) is independently developed by the receiving party without any reliance on Confidential Information disclosed by the disclosing party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the receiving party with the written consent of the disclosing party.

“Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to the Software, including, without limitation, any failure of the Software to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of the Software.

“Documentation” means any and all technical information, commentary, explanations, design and system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Software, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“Enhancements” means all updates, upgrades, patches, additions, modifications or other enhancements to the Software provided or made by Licensor or any Third Party, any new releases of Software, and all changes to the Documentation and Source Code as a result of such Enhancements.

“Governmental Entity” shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101(4) (2009), or any successor provision to that section. The term Governmental Entity shall also include agencies, independent agencies, the Judicial Branch, courts, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, offices of elective constitutional or statutory officers, and other units, branches, or entities of government.

“Public Code” means one or more of the following: (1) any software that contains or is derived in any manner (in whole or in part) from open source software or software subject to similar licensing or distribution requirements; and (2) any software that requires as a condition of its use, modification or distribution that such software (or other software incorporated into, derived from or distributed with such software) be either (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

“Services Contract” means the Services Agreement by and between the Agency and [name of vendor] (“Vendor”) dated _____, and all schedules, exhibits, and other attachments to that agreement, including, without limitation, the Statement of Work.

“Software” means the proprietary software components installed as part of the Iowa Medicaid Management Information System and Pharmacy Point-of-Sale pursuant to the service contract that arose from RFP # MED-12-001 and all other software, programs, applications, modules and components listed in Schedule A, in object code form, all related Documentation and Enhancements, and all copies of the foregoing. In the event Licensee accesses or receives the Source Code in accordance with the terms of Section 2.2 of this Agreement, the term “Software” as used throughout this Agreement shall be deemed to include and apply to Source Code.

“Source Code” means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to the Software. Source Code includes all source code listings, instructions (including compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.

“Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Software stated or expressed in this Agreement, the Services Contract, Documentation, the Licensee’s Request for Proposal No. MED-12-001 for the Iowa Medicaid Enterprise System Services Request for Proposal (“RFP”), and the Vendor’s proposal dated _____, in response to the RFP (“Proposal”). Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

“Statement of Work” shall have the meaning ascribed to it in the Services Contract.

“Third Party” means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

“Toolsets” means the business process modeling tool and any other programming, IDE, or business analysis tool or set of tools used by the Contractor for development or implementation of the requirements of RFP No. MED-12-001.

“User” means any Third Party that is authorized or permitted by the Licensee or a Governmental Entity to access or use the Software and its functions.

“Warranty Period” shall mean the period of time starting with the Agency’s acceptance of the Software and ending on the termination or expiration of the Services Contract.

All other capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Services Contract.

SECTION 2. SOFTWARE LICENSE

2.1 License. Licensors hereby grants to Licensee and to Governmental Entities a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license to:

2.1.1 Use, install, host, access, execute, copy, modify, edit, format, translate, maintain, support, repair, enhance, test, demonstrate, and display the Software, and prepare derivative works based on the Software, in all media now known or hereafter created;

2.1.2 Combine and use the Software with other software, firmware, Public Code and hardware;

2.1.3 Grant any or all of the rights set forth/granted in Subsections 2.1.1 and 2.1.2 above to Authorized Contractors; and

2.1.4 Grant rights to access and use the Software and its functions to Users.

All Software subject to this Agreement may be used on any one or more of the Licensee’s or any Governmental Entity’s computers, data center locations, networks, Internet or intranet sites, servers or other systems (“Licensee Systems”). For purposes of this Agreement, the parties agree that if the Licensee or any Governmental Entity User makes any modifications or enhancements to the Software, the Licensee or Governmental Entity who makes such modification or enhancement owns such modifications or enhancements.

The foregoing license grants and rights include a license under any current or future patents owned or licensable by Licensors to the extent necessary: (i) to exercise any license right granted herein; and (ii) to combine the Software with any other Deliverables provided under the Services Contract, including with any hardware and software.

2.2 Escrow of Source Code and Documentation. Licensors shall deposit and maintain at all times during the term of this Agreement a complete copy of the Source Code (on a media and in

an electronic format acceptable to Licensee) and all related Documentation for the most current version and immediately preceding version of the Software provided to Licensee hereunder (and under any agreement involving maintenance and/or support) in escrow with an escrow agent satisfactory to the Licensee. As Enhancements are produced or made available by Licensor (including pursuant to any agreement involving maintenance and/or support of the Software), Licensor shall immediately thereafter deposit a complete copy of the Source Code (on a media and in an electronic format acceptable to Licensee) and all updated Documentation in escrow with the escrow agent for Licensee's benefit. Licensee shall be entitled to receive all Source Code and Documentation in escrow from the escrow agent, after providing ten (10) days written notice to the escrow agent, upon the occurrence of any one or more of the following events: (i) Licensor violates or commits a breach of any term or condition of this Agreement or any agreement relating to maintenance and support of the Software, and Licensor fails to cure such breach within the time period established for curing such breach, if any; (ii) Licensor assigns, transfers, delegates, or subcontracts any of its maintenance or support obligations or duties under, or any interest in, any agreement it may have with Licensee relating to maintenance or support of the Software, without the prior written consent of Licensee; (iii) Licensor ceases to provide maintenance and support to Licensee, whether due to its ceasing to conduct business generally or otherwise, including, but not limited to Licensor's decision to no longer maintain or support the Software; (iv) Licensor terminates or suspends its business or ceases to do business; (v) Licensor becomes subject to any bankruptcy or insolvency proceeding under federal or state law; (vi) Licensor has become insolvent or unable to pay its obligations as they accrue or become due; (vii) Licensor makes an assignment for the benefit of Licensor's creditors; (viii) a receiver, trustee, liquidator, custodian or similar official has been appointed to act on behalf of the Licensor with respect to any of its operations or assets; (ix) Licensor merges, is sold or enters into an agreement to sell all or substantially all of its assets resulting in Licensor's failure to remain a party to, or otherwise retain all of its rights and obligations under, this Agreement or any agreement relating to maintenance and support of the Software, and the survivor or acquirer does not assume all of Licensor's rights and obligations under such agreements, whether by operation of law, written agreement or otherwise; or (x) Licensor violates or commits a breach of any term or condition of the source code escrow agreement, which breach has not been cured by Licensor within any applicable time period stated therein for curing such breach. Licensor, Licensee and an escrow agent acceptable to Licensee, shall execute and deliver a source code escrow agreement substantially in the form attached hereto as Schedule C (with such modifications as may be acceptable to Licensee) within fifteen (15) days after execution of this Agreement. Licensor shall pay all costs and fees payable to the escrow agent under the source code escrow agreement and shall not change the escrow agent or terminate, amend or modify the source code escrow agreement during the term of this Agreement, without Licensee's prior written consent.

In the event Licensee accesses or receives the Source Code in accordance with the terms of this Section 2.2, all of the rights and privileges granted under this Agreement with respect to the Software shall apply to the Source Code, and Licensee, Governmental Entities, and their Authorized Contractors shall be entitled to exercise all of such rights and privileges with respect to the Source Code, including all rights to maintain, modify, enhance, and prepare derivative works based upon, the Software and/or the Source Code.

2.3 Licensee Not Required to Accept or Install Enhancements. Licensor shall not condition any of the Licensee's rights and remedies, or the Licensor's obligations, under this Agreement or any other agreement related to the Software, on the Licensee accepting or installing any Enhancements or additional functionality provided by Licensor.

SECTION 3. TERM

The term of this Agreement and the license granted hereunder shall be perpetual unless terminated by either party only in accordance with the express terms of this Agreement.

SECTION 4. DELIVERY AND INSTALLATION.

Licensor shall deliver the Software to Agency and setup and install the Software (either directly, or indirectly, through Vendor) for use on the Licensee Systems specified by Licensee in accordance with the Services Contract and the Statement of Work. Licensor shall bear all freight, shipping, handling and insurance costs for delivery of the Software and shall bear all risk of loss with respect to the Software, including any losses resulting from any damage to or destruction of the Software, in whole or in part, which may occur prior to Licensee's delivery of written notice of Acceptance to Licensor with respect to the Software.

SECTION 5. COMPENSATION.

5.1 License Fee. In consideration of the grant of the perpetual license and all other rights granted to Licensee and Governmental Entities under this Agreement, Licensor shall be entitled to receive the amount specified in or in Schedule A to license the Software, subject to all of the terms and conditions of this Agreement and the Services Contract. Such amount, when paid, shall be deemed a fully paid-up license fee, and Licensee and Governmental Entities shall not be required to pay any additional license fees, expenses, costs, charges or other amounts in connection with this Agreement and the rights granted hereunder, unless otherwise agreed by Licensee in writing.

5.2 Invoice and Payment. Licensor may invoice the Agency for the license fee following installation and upon Licensee's acceptance of the software. The Agency shall pay all approved invoices in accordance with and subject to the terms and conditions of the Services Contract. Notwithstanding anything herein to the contrary, the Agency shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Agency believes the invoice is inaccurate or incorrect in any way.

5.3 Set Off. In the event that Licensor owes the Agency or the State any sum under the terms of this Agreement, the Services Contract, any other agreement, pursuant to a judgment, or pursuant to any law, the Agency may set off such sum against any sum invoiced to the Agency in the Agency's sole discretion unless otherwise required by law. Amounts due to the Agency or State as liquidated damages or any other damages awarded by a court, an administrative law judge, or any other similar entity, may be deducted by the Agency from any money or sum payable by the Agency to Licensor pursuant to this Agreement or any other agreement between Licensor and the Agency or the State.

5.4 Withholding. In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Licensor, in whole or in part, without penalty or legal liability to Licensee or work stoppage by Licensor, in the event: (i) Licensor fails to provide Software or correct any Deficiencies with respect to any Software to Licensee's satisfaction; (ii) Licensor fails to perform any of its other obligations as set forth in this Agreement and/or the Services Contract; or (iii) the Software or any portion thereof fails to meet or conform to any applicable Specifications. No interest shall accrue or be paid to Licensor on any compensation or other amounts withheld or retained pursuant to the Section 5.4.

SECTION 6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.1 Licensor represents and warrants that during the Warranty Period, the Software (in whole and in part) shall: (i) be free from material Deficiencies; (ii) conform to and operate in accordance with all Specifications; and (iii) be compatible with and interoperate fully and correctly with the Licensee Systems specified in Schedule B. Licensor warrants that all media containing or relating to the Software furnished hereunder shall be free from defects in material and workmanship. During the Warranty Period, Licensor shall, at Licensee's request and at Licensor's expense, repair, correct or replace any Software that fails to comply with the warranties and requirements of this Section 6.1 promptly upon receiving notice of such failure from Licensee, but in no event more than 3 days after the date of receipt of such notice. In the event Licensor is unable to repair, correct or replace such Software to Licensee's satisfaction, Licensor shall refund the fees or other amounts paid for such Software within ten (10) business days after Licensee's request for such refund. The foregoing shall not constitute an exclusive remedy under this Agreement, and Licensee shall be entitled to pursue any other available contractual, legal or equitable remedies.

6.2 Licensor represents and warrants that Licensor is fully aware of Licensee's business requirements and intended uses for the Software as set forth in the RFP, and the Software shall satisfy such requirements in all material respects and is fit for such intended uses.

6.3 Licensor represents and warrants that: (i) it is the owner of the Software and any and all intellectual property rights in and to such Software, including, but not limited to, copyrights, trademarks, trade secrets, trade dress, and/or patent rights; (ii) it owns, possesses, holds, and has received all rights, permits, permissions, licenses and authority necessary to provide all Software to Licensee hereunder and to grant and convey the benefits, licenses and other rights granted or conveyed to Licensee and Governmental Entities hereunder without violating any rights of any Third Party; (iii) the Software shall be wholly original with and prepared solely by Licensor; (iv) Licensor has not previously and will not grant any rights in the Software to any Third Party that are inconsistent with the rights granted herein; and (v) Licensee and Governmental Entities shall peacefully and quietly have, hold, possess, use and enjoy all Software without suit, disruption or interruption.

6.4 Licensor represents and warrants that: (i) the Software (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, the Software); (ii) Licensee's (and any Governmental Entity's) use of the Software in accordance with the terms of this Agreement; and (iii) Licensee's (and any Governmental Entity's) exercise of the rights, licenses and benefits granted or conveyed hereunder, do not and will not misappropriate a trade secret or infringe upon any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Licensor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. Licensor shall immediately inform Licensee in writing upon becoming aware of any actual, potential or threatened claim of infringement or violation of any intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. If such a claim arises or is likely to arise, then Licensor shall, at the Licensee's request: (i) procure for the Licensee and Governmental Entities the right or license to continue to use the Software at issue; (ii) replace such Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation; or (iii) modify or replace the affected portion of the Software with functionally equivalent or superior Software free of any such infringement, violation or

misappropriation. In the event Licensor is unable to fulfill its obligation under (i), (ii) or (iii) above as requested, Licensor shall accept the return of the Software and refund to the Licensee all fees, charges and any other amounts paid by the Licensee with respect to such Software. In addition, Licensor agrees to fully indemnify, defend, protect and hold harmless the Licensee, Governmental Entities and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Licensee and shall survive termination of this Agreement.

6.5 The Licensor represents and warrants that all Software provided under this Agreement which uses date data shall accurately process data, including but not limited to, calculating, comparing and sequencing from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, integral calculations, day-in-year calculations, day-of-week calculations and week-of-year calculations; and not experience abnormal ending and/or produce invalid or incorrect results in the operation of the Software or Licensee's System. If the Software is to perform as a system with other hardware and/or software, then this warranty shall apply to the Software as it processes, transfers, sequences data, or otherwise interacts with other software, hardware, components or other parts of the system, provided that such other software, hardware, components or parts do not fail to meet any applicable requirements of this Section 6.5. The remedies available to the Licensee for breach of this warranty include, but are not limited to, repair or replacement of non-compliant Software. Nothing in this warranty shall be construed to limit any rights or remedies of the Licensee under this Agreement with respect to Deficiencies in the Software other than data processing compliance.

6.6 The Licensor represents and warrants that all Software and Enhancements do not and shall not as delivered or provided by Licensor contain an anti-use device, a disabling device, lockup program, a so-called "time bomb" or "drop dead" device, "back door," instructions, contaminants, viruses, Trojan Horses, worms, cancelbots, or any other mechanism, code or computer programming routine that will disable, damage, impair or impede, lock-up, alter, halt, abnormally end, surreptitiously intercept, expropriate or interfere with the Software, Licensee Systems or any data or information of Licensee. Licensor further represents and warrants that all Software and Enhancements do not contain any other programming or device of any kind that would allow unauthorized access to the Software by Licensor or any other person or any Third Party. Licensor covenants that it will not under any circumstance, including enforcement of a valid contract right, (i) install or trigger a lockup program or disabling device, or (ii) take any step that would in any manner interfere with Licensee's use of the Software or Licensee Systems, or restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this provision, Licensor shall, immediately after receipt of notification of the breach, cure the breach to Licensee's satisfaction, including, without limitation, repairing, at Licensor's expense, any damage done to the Software or Licensee Systems or any other property.

6.7 Licensor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, local and international laws, rules, regulations, codes, orders and ordinances in connection with its performance of this Agreement.

6.8 Licensor represents and warrants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

6.9 Licensors represents and warrants that the Software and the license, use and other rights granted hereunder comply with, and shall comply with, all applicable federal, state, local and international laws, rules, regulations, codes, orders and ordinances in effect as of the date of this Agreement, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

6.10 Licensors has not incorporated and will not incorporate, without the prior written consent of Licensee, any Public Code, in whole or in part, into any part of the Software or any Enhancement, or use Public Code, in whole or in part, in the development of any part of the Software or any Enhancement in a manner that may subject the Software or any Enhancement, in whole or in part, to all or part of the license obligations of any Public Code.

6.11 Licensors represents and warrants that all Documentation will accurately reflect the operation of the Software or other Deliverables to which the Documentation pertains and will enable the Licensee to use, modify and maintain the Software fully and completely.

6.12 Licensors's warranties provided in this Section 6 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Licensee.

SECTION 7. TERMINATION.

7.1 Termination by Licensee for Cause. The Licensee may terminate this Agreement, without penalty or legal liability, upon written notice for the breach by Licensors of any material term, condition or provision of this Agreement, if such breach is not cured within any time period specified in the notice of breach or any subsequent notice delivered by Licensee to Licensors, assuming cure is feasible. The Licensee's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Licensee.

7.2 Termination by Licensee for Reasons Other Than Cause. Licensee may terminate this Agreement for any of the reasons for which the Agency may terminate the Services Contract upon providing any applicable written notice expressly required to be provided pursuant to the Services Contract. For purposes of this Section 7.2, all references in the Services Contract to the terms "State," "Agreement," "Deliverables," and Vendor, shall be deemed to include and additionally refer to the terms "Licensee," "Agreement," "Software," and "Licensors," respectively, as used herein. Licensee's right to terminate this Agreement for any of the reasons provided herein shall survive termination of the Services Contract.

7.3 Termination by Licensors for Cause. Licensors may only terminate this Agreement and revoke the license and other rights granted under this Agreement if Licensee has breached this Agreement by failing to pay in full the license fee specified in Section 5.1 in accordance with the terms of this Agreement and the Services Contract, or if Licensee commits a material breach of Section 9.2 of this Agreement, provided in either event that Licensors first gives Licensee written notice of the alleged breach and a 60-day period in which to cure the breach. Licensors may not terminate this Agreement and revoke the license and other rights granted hereunder if Licensee's failure to pay any portion or all of the license fee or other amounts arises from or

relates to Licensee's withholding or retention of such amounts in accordance with this Agreement or the Services Contract. Upon termination of this Agreement by Licensor in accordance with this Section 7.3, Licensee will return the Software to Licensor or will certify in writing to Licensor that it has destroyed all copies of the Software. Except as expressly provided in this Section 7.3, Licensor shall not be entitled to terminate this Agreement or revoke the license and other rights granted herein.

7.4 Limitation of the Licensee's Payment Obligations. In no event shall Licensee be required to pay any amounts other than those expressly stated in Section 5.1 of this Agreement. The Licensee (and Governmental Entities) shall not be liable, under any circumstances and regardless of termination of this Agreement, for any of the following:

7.4.1 The payment of unemployment compensation to Licensor's employees;

7.4.2 The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

7.4.3 Any costs incurred by Licensor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement and/or the Services Contract;

7.4.4 Any damages or other amounts for or relating to the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement, the Services Contract or any agreement with Third Parties;

7.4.5 Any taxes Licensor may owe in connection with the performance of this Agreement or the Services Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

SECTION 8. INDEMNIFICATION.

8.1 Licensor and its successors and permitted assigns shall indemnify and hold harmless the Licensee and Governmental Entities and their employees, officers, directors, agents, and officials (individually and collectively "Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnatee) related to, resulting from or arising out of this Agreement, including, but not limited to, any claims related to, resulting from, or arising out of:

8.1.1 Any violation or breach of any term or condition of this Agreement by Licensor; or

8.1.2 Any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Licensor, its officers, employees, agents, directors, contractors or subcontractors; or

8.1.3 Failure by Licensor or its employees, agents, officers, or directors to comply with any applicable local, state, and federal laws, rules, ordinances or regulations; or

8.1.4 Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party,

including any claim that the Software or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party.

8.2 Licensor's obligations under this Section 8 are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.

8.3 Licensor shall be liable for any personal injury or damage to property caused by the fault or negligence of Licensor, its officers, directors, employees, agents, contractors and subcontractors.

8.4 Licensor's duties as set forth in this Section 8 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Licensee or any other Indemnitee.

SECTION 9. CONTRACT ADMINISTRATION.

9.1 Independent Contractor. The status of the Licensor shall be that of an independent contractor. Licensee shall not provide the Licensor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither the Licensor nor its employees shall be considered employees of the State of Iowa. Neither the Licensor nor its employees are eligible for any State employee benefits, including but not limited to, retirement benefits, insurance coverage or the like. Neither the Licensor nor its employees shall be considered employees of the Licensee or the State of Iowa for federal or state tax purposes. Licensee shall not withhold taxes on behalf of the Licensor (unless required by law). The Licensor shall be responsible for payment of all taxes in connection with any income earned in connection with this Agreement.

9.2 Confidentiality. Except as provided or contemplated herein, and subject to applicable federal, state or international laws, rules or regulations (including Iowa Code Chapter 22 and [insert citation for the Agency's Fair Info. Practices rules) the Licensee shall not disclose to Third Parties (excluding Governmental Entities and Authorized Contractors) any information of Licensor that is marked or otherwise clearly identified by Licensor as Confidential Information without the prior written consent of Licensor. Licensor shall limit such identification to information it reasonably believes is entitled to confidential protection pursuant to such applicable laws, rules and regulations. Notwithstanding the foregoing, the Licensee may disclose Licensor's Confidential Information pursuant to: (i) any legal, judicial, or administrative proceedings, subpoena, summons, order, ruling or other legal or administrative processes; and/or (ii) applicable laws, rules, or regulations. In such event, the Licensee shall provide prompt notice to Licensor of the circumstances giving rise to the Licensee's disclosure. Licensor acknowledges that the Licensee is subject to Iowa Code Chapter 22 and other laws, rules and regulations governing public records. If a request is made to view or otherwise access Licensor's Confidential Information pursuant to such laws, rules or regulations, the Licensee will promptly notify Licensor of the request. Subject to the foregoing, the Licensee will use reasonable efforts to protect Licensor's Confidential Information provided such information can reasonably be determined to constitute a confidential record under Iowa Code Section 22.7 or other applicable laws, rules or regulations. In the event the Licensee reasonably determines that such information is not a confidential record, the Licensee may release such information

unless Licensor files an action in Polk County District Court to prevent the release of the requested information within ten (10) days of receiving notice from the Licensee.

9.3 Compliance with Laws. Licensor and its employees, agents, officers, directors, contractors and subcontractors shall comply with all applicable federal, state, international and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement, including, without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management or the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws and laws relating to the use of targeted small businesses as subcontractors or suppliers. Licensor shall comply with any applicable reporting and compliance standards of the Iowa Department of Management regarding equal employment. Licensor may be required to submit its affirmative action plan to the Iowa Department of Management to comply with the requirements of 541 Iowa Admin. Code 4. Licensor represents and warrants that it has complied with all federal, state, foreign and local laws, codes, rules, ordinances, orders and regulations applicable to the performance of its obligations under this Agreement.

9.4 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by the parties.

9.5 Third-Party Rights. No person other than the parties hereto, their respective successors and permitted assigns, and Governmental Entities may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Licensee, Governmental Entities, Users, and the Licensor.

9.6 Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Licensor hereby irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Licensee, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. Licensor irrevocably consents to service of process by certified or registered mail addressed to the Licensor's designated agent. The Licensor appoints _____, as its agent to receive service of process. If for any reason the Licensor's agent for service is unable to act as such or the address of the agent changes, Licensor shall immediately appoint a new agent and provide the Agency with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by

the Licensee. Nothing in this provision will alter the right of the Licensee to serve process in any other manner permitted by law. This Section 9.6 shall survive termination of this Agreement.

9.7 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that the Licensee may assign this Agreement to any State agency or unit of State government that succeeds the Agency's rights hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Agency to which the Software relates. For purposes of construing this clause, a transfer of a controlling interest in the Licensor, a merger, sale or consolidation of Licensor, or a sale of substantially all of Licensor's assets shall be considered an assignment. Licensor agrees that it shall provide Licensee with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Licensor and of any proposed merger, sale or consolidation of Licensor. Licensor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Licensor or any affiliate thereof without the prior written consent of Licensee.

9.8 Integration. This Agreement represents the entire agreement between the parties concerning the grant of the perpetual license, distribution rights and other rights granted to Licensee and Governmental Entities under this Agreement, and neither party is relying on any representation that may have been made with respect thereto which is not included in this Agreement. This Agreement shall not supersede the Services Contract. Licensee shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, "sneakwrap" agreement, or any other similar agreement that may accompany or relate to the Software. Licensor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Licensee on the basis of draftsmanship or preparation hereof.

9.9 Headings or Captions and Terms. The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

9.10 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

9.11 Obligations Beyond Agreement Term. This Agreement shall remain in full force and effect perpetually unless terminated pursuant to Section 7 of this Agreement. Licensor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set

forth in Sections 2.1-2.3, 5.2-5.4, 6-8, 9.4, 9.2, 9.3, 9.5, 9.6, 9.8, 9.11-9.16, 9.18, 9.19, 9.22, 9.24, 9.26, and 9.29-9.32 shall survive termination of this Agreement.

9.12 Use of Third Parties. None of the services to be provided by Licensor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of Licensee. Licensee's consent shall not be deemed in any way to provide for the incurrance of any additional obligation of Licensee, whether financial or otherwise. Any subcontract to which the Licensee has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Licensee may deem necessary. Licensor is solely liable for any and all payments that may be due to the subcontractor pursuant to its subcontract agreement with Licensor. Licensor shall indemnify, defend and hold harmless the Licensee from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Licensor's breach of any subcontract into which it enters, including Licensor's failure to pay any and all amounts due by Licensor to any subcontractor. No subcontract or delegation of work shall relieve or discharge Licensor from any obligation, provision, or liability under this Agreement. Licensor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Licensor, would constitute a breach of this Agreement, shall be deemed a breach by Licensor and have the same legal effect.

9.13 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of Licensee and the Licensor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

9.14 Notices. Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to Licensee:

If to Licensor:

Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier. From time to time, either party may change the name and address of a party designated to

receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

9.15 Cumulative Rights. The various rights, powers, options, elections and remedies of Licensee provided in this Agreement shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed Licensee by law, and shall in no way affect or impair the right of Licensee to pursue any other contractual, equitable or legal remedy to which Licensee may be entitled. Licensee's election of any one or more remedies shall not constitute a waiver of the right to pursue any other available remedies.

9.16 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

9.17 Authorization. Licensors represents and warrants to Licensee that:

9.17.1 It has the right, power and authority to enter into and perform its obligations under this Agreement;

9.17.2 It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself enforceable in accordance with its terms.

9.18 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives

9.19 Record Retention And Access. The Licensors shall maintain books, records, and documents which sufficiently and properly document all services and deliverables provided under this Agreement and calculate all charges billed to the Licensee throughout the term of this Agreement for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or completion of any required audit. The Licensors shall permit the Licensee, the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Licensors relating to orders, invoices, or payments or any other documentation or materials pertaining to this Agreement. The Licensors shall not impose or seek payment for any charge, fee or expense associated with any audit or examination of the Licensors's books and records conducted in accordance with this provision.

9.20 Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

9.21 Additional Provisions. The parties agree that if an Addendum, Schedule, Rider or Exhibit is attached and referred to in this Agreement then the same shall be deemed incorporated herein by reference.

9.22 Further Assurances and Corrective Instruments. Licensor agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

9.23 Award of Related Agreements. The Licensee may undertake or award supplemental or successor agreements for work related to this Agreement, the Services Contract or with respect to the Software. Licensor shall cooperate fully with other contractors, consultants and other persons who may be engaged by Licensee in connection with this Agreement, the Services Contract or with respect to any of the Software. Licensor will ensure that its subcontractors, if any, will abide by this provision.

9.24 Sovereign Immunity. The Agency, Governmental Entities and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations, including, without limitation, Iowa Code Chapter 669 and the Constitution of the State of Iowa.

9.25 Reserved for any special provisions or unique requirements of Agency.

9.26 Care of Property. Licensor shall be responsible for the proper custody and care of any licensee property furnished for Licensor's use in connection with the performance of the Agreement, and Licensor will reimburse the Licensee for any loss or damage to such property caused by Licensor, or any person, agent or subcontractor employed or utilized by Licensor, normal wear and tear excepted.

9.27 Licensor shall notify Licensee in writing if any of the following has been engaged in by or occurred with respect to Licensor or any corporation, shareholder or entity having or owning a controlling interest in Licensor:

9.27.1 Licensor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

9.27.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

9.27.3 Making an assignment for the benefit of creditors;

9.27.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Licensor's performance of its obligations under this Agreement;

9.27.5 An order is entered approving an involuntary petition to reorganize the business of Licensor for all or part of its property;

9.27.6 If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Licensor is issued by any court or administrative agency against all or any material portion of Licensor's property; or

9.27.7 Taking any action to authorize any of the foregoing.

9.28 Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

9.29 Taxes. Licensor shall be responsible for paying any taxes incurred by Licensor in the performance of this Agreement. The State and the Agency are exempt from the payment of Iowa sales and other taxes.

9.30 Obligations of Joint Entities. If Licensor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

9.31 Attorney's Fees and Expenses. Subject to the other terms and conditions of this Agreement, in the event Licensor defaults in any obligations under this Agreement, Licensor shall pay to Licensee all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office, expert fees, costs of the action, as well as expenses and attorney fees of other counsel retained by or on behalf of Licensee) incurred by Licensee in enforcing this Agreement or any of its rights and remedies with respect thereto.

9.32 Time is of the Essence. Time is of the essence with respect to Licensor's performance of its obligations under this Agreement. Licensor shall ensure that all personnel providing services to Licensee are responsive to Licensee's requirements and requests in all respects.

SECTION 10. EXECUTION.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

Licensor

[name].

By: _____

Date: _____

Title: _____

Licensee

State of Iowa, acting by and through
the [name of Agency]

By: _____

Date: _____

Title: _____

SCHEDULE A
DESCRIPTION OF SOFTWARE AND LICENSE FEES

SCHEDULE B
DESCRIPTION OF LICENSEE SYSTEMS

SCHEDULE C

SOURCE CODE ESCROW AGREEMENT

Deposit Account Number: _____

1. Introduction.

This Source Code Escrow Agreement (the "**Agreement**") is entered into by and between [_____] (the "**Depositor**"), and by the State of Iowa, acting by and through the [name of Agency] (the "**Beneficiary**") and by [_____] ("**Escrow Agent**") on this _____ day of _____ (the "**Effective Date**"). Depositor, Beneficiary, and Escrow Agent may be referred to individually as a "Party" or collectively as the "Parties" throughout this Agreement.

- (a) The use of the term services in this Agreement shall refer to Escrow Agent services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit A attached hereto ("**Services**"). A Party shall request Services under this Agreement by submitting a work request to the Escrow Agent for certain Escrow Agent Services ("**Work Request**") via written instruction, with a copy of such request submitted to all parties.
- (b) The Beneficiary and Depositor have, or will have, entered into a license agreement or other agreement (the "Software License Agreement") conveying intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to the Software License Agreement, pursuant to Title 11 United States Bankruptcy Code, Section 365(n). Terms not defined herein shall have the meaning or definition ascribed to them in the Software License Agreement, a copy of which is attached hereto.

2. Depositor Responsibilities and Representations.

- (a) Depositor shall make an initial deposit that is complete and functional of all proprietary technology and other materials covered under this Agreement, including the Source Code and Documentation, as defined and described in the Software License Agreement (collectively "**Deposit Material**") to Escrow Agent within thirty (30) days of the Effective Date. Depositor shall deposit and maintain at all times during the term of the Software License Agreement a complete copy of the Source Code (on a media and in an electronic format acceptable to Beneficiary) and all related Documentation for the most current version and immediately preceding version of the Software provided to Beneficiary under the Software License Agreement (and under any agreement involving maintenance and/or support of the Software) in escrow with Escrow Agent. As Enhancements are produced or made available by Depositor (including pursuant to any agreement involving maintenance and/or support of the Software), Depositor shall immediately thereafter deposit a complete copy of the Source Code (on a media and in an electronic format acceptable to Beneficiary) and all updated Documentation in escrow with Escrow Agent for Beneficiary's benefit. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Escrow Agent using the form attached hereto as Exhibit B.
- (b) Depositor represents and warrants that it lawfully possesses all Deposit Material provided to Escrow Agent under this Agreement free of any liens, pledges, security interests or other encumbrances as of the date of their deposit. Depositor represents, warrants and covenants that any Deposit Material liens or encumbrances made after their deposit will not prohibit, limit, or alter the rights and obligations of Escrow Agent under this Agreement. In the event the Beneficiary receives the Deposit Material in accordance with Exhibit C,

Beneficiary's use of the Deposit Material shall not be limited or otherwise adversely affected by any liens, pledges, security interests or other encumbrances granted or established by or on behalf of Depositor with respect to the Deposit Material. Depositor represents and warrants that with respect to the Deposit Material, Escrow Agent's proper administration of this Agreement will not violate the rights of any third parties.

- (c) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously. Depositor represents and warrants that the Deposit Material is in a form suitable for reproduction by computer equipment, and the Deposit Material includes all necessary materials to permit a programmer to recreate executable versions of the Software from the Source Code and to maintain and support the Software.
- (d) Depositor agrees, upon request by Escrow Agent, in support of Beneficiary's request for verification Services, to promptly complete and return the Escrow Deposit Questionnaire attached hereto as Exhibit D. Depositor consents to Escrow Agent's performance of any level(s) of verification Services described in Exhibit A attached hereto and Depositor further consents to Escrow Agent's use of a subcontractor to perform verification Services. Any such subcontractor shall be bound by the same confidentiality obligations as Escrow Agent and shall not be a direct competitor to either Depositor or Beneficiary. Escrow Agent shall be responsible for the delivery of Services of any such subcontractor as if Escrow Agent had performed the Services. Depositor represents that all Deposit Material is provided with all rights necessary for Escrow Agent to verify such proprietary technology and materials upon receipt of a Work Request for such Services or agrees to use commercially reasonable efforts to provide Escrow Agent with any necessary use rights or permissions to use materials necessary to perform verification of the Deposit Material. Depositor agrees to cooperate with Escrow Agent by providing reasonable access to its technical personnel for verification Services whenever reasonably necessary.
- (e) Depositor agrees to deposit with the Escrow Agent a new copy of the Deposit Material in the event that all or any material part of the Deposit Material then on deposit with the Escrow Agent is destroyed or so corrupted as to not be compilable into machine-readable form.

3. Beneficiary Request for Verification Services.

Beneficiary may submit a verification Work Request to Escrow Agent for one or more of the Services defined in Exhibit A attached hereto and further consents to Escrow Agent's use of a subcontractor if needed to provide such Services. Beneficiary warrants that Escrow Agent's use of any materials supplied by Beneficiary to perform the verification Services described in Exhibit A is lawful and does not violate the rights of any third parties.

4. Escrow Agent Responsibilities and Representations.

- (a) Escrow Agent agrees to provide the Services requested by Authorized Person(s) (as identified in the "Authorized Person(s)/Notices Table" below) representing the Depositor or Beneficiary in a Work Request. Escrow Agent may reject a Work Request (in whole or in part), except for any Work Request by Beneficiary to Release Deposit Material, that does not contain all required information at any time upon notification to the Party originating the Work Request.
- (b) Escrow Agent will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit B. If Escrow Agent determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B attached hereto, Escrow Agent will notify Depositor and Beneficiary of such discrepancies and notate such discrepancy on the Exhibit B.

- (c) Escrow Agent will provide notice to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement.
- (d) Escrow Agent will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill any standard verification Services Work Request or develop a custom Statement of Work ("**SOW**"). Escrow Agent and the requesting Party will mutually agree in writing to an SOW on the following terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of Verification testing; requesting Party responsibilities; Escrow Agent responsibilities; Service Fees; invoice payment instructions; designation of the paying Party; designation of authorized SOW representatives for both the requesting Party and Escrow Agent with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth therein.
- (e) Escrow Agent will hold and protect Deposit Material in physical or electronic vaults that are either owned or under the control of Escrow Agent, unless otherwise agreed to by the Parties. Escrow Agent shall provide and exercise the same degree of care as is generally accepted to constitute industry best practices for commercial providers of source code escrow agent services
- (f) Upon receipt of written instructions by both Depositor and Beneficiary, Escrow Agent will permit the replacement or removal of previously submitted Deposit Material. The Party making such request shall be responsible for getting the other Party to approve the joint instructions.

5. Payment.

The Party responsible for payment designated in Exhibit A ("**Paying Party**") shall pay to Escrow Agent all fees as set forth in the Work Request ("**Service Fees**"). All Service Fees payable by Depositor are due within thirty (30) calendar days from the date the invoice is received by the Depositor. Escrow Agent shall submit an invoice to the Paying Party requesting payment of the Service Fees specified in Exhibit A. Any invoice submitted to the Beneficiary shall comply with any applicable State of Iowa rules or procedures concerning payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Beneficiary. The Beneficiary shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Beneficiary may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. The Beneficiary shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Beneficiary believes the invoice is inaccurate or incorrect. Any Service Fees not timely paid by the Depositor when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less.

6. Term and Termination.

- (a) The "**Term**" of this Agreement is for a period of one (1) year from the Effective Date ("**Initial Term**") and will automatically renew for additional one (1) year terms ("**Renewal Term**") and continue in full force and effect until one of the following events occur: (i) Depositor and Beneficiary provide Escrow Agent with sixty (60) days' prior written joint notice of their intent to terminate this Agreement; (ii) Beneficiary provides Escrow Agent and Depositor with sixty (60) days' prior written notice of its intent to terminate this Agreement; or (iii) the Agreement terminates under another provision of this Agreement. If

the Effective Date is not specified in the Introduction section, then the last date noted on the signature blocks of this Agreement shall be the Effective Date.

- (b) Unless the express terms of this Agreement provide otherwise, upon termination of this Agreement. Except in the event of a termination of this Agreement due to the fault of or breach by Depositor, in which case Escrow Agent shall release the Deposit Material to the Beneficiary, Escrow Agent shall return the Deposit Material to the Depositor. If reasonable attempts to return the Deposit Material to Depositor are unsuccessful, Escrow Agent shall destroy the Deposit Material.
- (c) Agent shall be permitted to terminate this Agreement and return the Deposit Material to Depositor for the failure of the Beneficiary to timely pay any undisputed Service Fees for which Beneficiary is expressly responsible under Exhibit A; provided, however, that no termination may occur for non-payment of fees by Beneficiary unless and until the Escrow Agent has provided Beneficiary with sixty (60) days notice and Beneficiary fails to pay such undisputed fees within such sixty day period. Escrow Agent also may terminate this Agreement for any failure by Depositor to pay any Service Fees for which Depositor is expressly responsible under this Agreement if the Escrow Agent provides written notice to the Parties of such failure or material breach and intention to terminate and Depositor fails to cure such failure or material breach within thirty (30) days after receipt of such notice; provided, however, that prior to any such termination becoming effective the Escrow Agent shall first deliver to the Depositor above all of the Deposit Material.

7. General Indemnity.

Subject to Section 10 and 11, Depositor shall defend, indemnify and hold harmless the other Parties, their corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the Depositor or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.

8. Warranties.

- (a) ESCROW AGENT REPRESENTS AND WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER.
- (b) Depositor represents and warrants that all Depositor information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Depositor information during the Term of this Agreement.
- (c) Beneficiary warrants that all Beneficiary information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Beneficiary information during the Term of this Agreement.
- (d) Ownership Warranty. Depositor warrants that it is the owner or legal custodian of the Deposit Material and has full authority to store the Deposit Material and direct their disposition in accordance with the terms of this Agreement. Depositor shall reimburse Escrow Agent for any expenses reasonably incurred by Escrow Agent (including reasonable legal fees) by reason of Escrow Agent's compliance with the instructions of Depositor in the event of a dispute concerning the ownership, custody or disposition of Deposit Material stored by Depositor with Escrow Agent.

9. Confidential Information.

Escrow Agent shall have the obligation to protect the confidentiality of the Deposit Material. Except as provided in this Agreement Escrow Agent shall not disclose, transfer, make available

or use the Deposit Material. Escrow Agent shall not disclose the terms of this Agreement to any third Party. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Escrow Agent will notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, Escrow Agent may comply in good faith with such order. It shall be the responsibility of Depositor or Beneficiary to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Depositor or Beneficiary, as applicable, to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

10. Limitation of Liability.

ESCROW AGENT'S LIABILITY TO DEPOSITOR, IF ANY, WHETHER ARISING IN CONTRACT OR TORT, SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF ALL FEES PAID OR OWED TO ESCROW AGENT UNDER THIS AGREEMENT. IF ANY CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS. THIS LIMIT SHALL NOT APPLY TO LIMIT ESCROW AGENT'S LIABILITY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) DAMAGE TO TANGIBLE PROPERTY ; (IV) THEFT; (V) NEGLIGENCE OR WILLFUL MISCONDUCT; OR (VI) ESCROW AGENT'S FAILURE TO DELIVER THE DEPOSIT MATERIALS TO BENEFICIARY UPON BENEFICIARY'S WRITTEN WORK REQUEST AS PROVIDED IN EXHIBIT C. THIS PROVISION AND THE LIMITATIONS ON LIABILITY SHALL NOT APPLY TO BENEFICIARY

11. Consequential Damages Waiver.

IN NO EVENT SHALL ESCROW AGENT BE LIABLE TO DEPOSITOR FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR INFORMATION, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT OR TORT. THIS SECTION 11 SHALL NOT APPLY TO LIMIT ESCROW AGENT'S LIABILITY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) DAMAGE TO TANGIBLE PROPERTY; (IV) THEFT; (V) NEGLIGENCE OR WILLFUL MISCONDUCT; OR (VI) ESCROW AGENT'S FAILURE TO DELIVER THE DEPOSIT MATERIALS TO BENEFICIARY UPON BENEFICIARY'S WRITTEN WORK REQUEST AS PROVIDED IN EXHIBIT C. THIS PROVISION AND THE LIMITATIONS ON LIABILITY SHALL NOT APPLY TO BENEFICIARY

12. General.

- (a) Incorporation of Work Requests. All valid Depositor and Beneficiary Work Requests are incorporated into this Agreement.
- (b) Right to Make Copies. Escrow Agent shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. Escrow Agent shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by Escrow Agent. Any copying expenses incurred by Escrow Agent as a result of a Work Request to copy will be borne by the Party requesting the copies. Escrow Agent may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for Escrow Agent to perform this Agreement.

- (c) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled and governed by and construed under the laws of the State of Iowa, as if performed wholly within the state and without giving effect to the principles of conflicts of laws.
- (d) Authorized Person(s). Depositor and Beneficiary must each authorize and designate one person whose actions will legally bind such party ("Authorized Person" who shall be identified in the Authorized Persons (s) Notices Table of this Agreement) and who may manage the Escrow Agent escrow account through the Escrow Agent website or written instruction. The Authorized Person for each the Depositor and Beneficiary will maintain the accuracy of their name and contact information provided to Escrow Agent during the term of this Agreement.
- (e) Right to Rely on Instructions. Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine and from an Authorized Person(s), officer, or other employee of a Party. Escrow Agent may assume that such representative of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so.
- (f) Force Majeure. No Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- (g) Notices. All notices regarding Exhibit C (release) shall be sent by commercial express mail or other commercially appropriate means that provide prompt delivery and require proof of delivery. All other correspondence, including invoices, payments, and other documents and communications, may be sent electronically or via regular mail. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice to last known address of the other Parties that is relied on herein and that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities by mail, through messenger or commercial express delivery services.
- (h) No Waiver. No waiver of rights under this Agreement by any Party shall constitute a subsequent waiver of this or any other right under this Agreement.
- (i) Assignment. No assignment of this Agreement by Depositor or any rights or obligations of Depositor under this Agreement is permitted without the written consent of Escrow Agent, which shall not be unreasonably withheld or delayed. Escrow Agent shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor unless Escrow Agent receives clear, authoritative and conclusive written evidence of the change of parties.
- (j) Severability. In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. If this paragraph becomes applicable and, as a result, the value of this Agreement is materially impaired for any Party, as determined by such Party in its sole discretion, then the affected Party may terminate this Agreement by written notice to the others.
- (k) Independent Contractor Relationship. Depositor and Beneficiary understand, acknowledge, and agree that Escrow Agent's relationship with Depositor and Beneficiary will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.

- (l) No Agency. No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Parties or bind the other Parties in any respect whatsoever.
- (m) Disputes. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought or commenced only in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced only in the United States District Court for the Southern District of Iowa, Central Division.
- (n) Regulations. All Parties are responsible for and warrant, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import; export and re-export laws; and government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement.
- (o) No Third Party Rights. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto.
- (p) Entire Agreement. The Parties agree that this Agreement, which includes all the Exhibits attached hereto and all valid Work Requests submitted by the Parties, is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. This Agreement may only be modified by mutual written agreement of the Parties.
- (q) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (r) Survival. Sections 6 (Term and Termination), 7 (General Indemnity), 8 (Warranties), 9 (Confidential Information), 10 (Limitation of Liability) 11(Consequential Damages Waiver), and 12 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached hereto.
- (s) All of the terms, provisions and condition so this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives.
- (t) The Escrow Agent shall maintain books, records, and documents which sufficiently and properly document the Escrow Agent's compliance with the terms of this Agreement and show all charges billed to or paid by the Beneficiary named above throughout the term of this Agreement for a period of at least five (5) years following the termination or expiration of this Agreement, or completion of any required audit. The Escrow Agent shall permit the Beneficiary, the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Escrow Agent relating to this Agreement. The Escrow Agent shall not impose or seek payment for any charge, fee or expense associated with any audit or examination of its books and records conducted in accordance with this provision.

- (u) Time is of the essence with respect to performance by the Escrow Agent and Depositor of their respective obligations under this Agreement.

DEPOSITOR

Company Name:	
Signature:	
Print Name:	
Title:	
Date:	
Email Address	

BENEFICIARY

Company Name:	State of Iowa, Name of Agency
Signature:	
Print Name:	
Title:	
Date:	
Email Address:	

ESCROW AGENT

Signature:	
Print Name:	
Title:	
Date:	
Email Address:	

DEPOSITOR – AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

Company:	
Administrative Contact Print Name:	
Title:	
Email Address	
Address 1	
Address 2	
City/State/Province	
Postal/Zip Code	
Phone Number	
Fax Number	

BENEFICIARY -- AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

Company:	State of Iowa, Name of Agency
Administrative Contact Print Name:	
Title:	
Email Address	
Address 1	
Address 2	
City/State/Province	
Postal/Zip Code	
Phone Number	
Fax Number	

ESCROW AGENT

Title:	
Email Address	
Address 1	
Address 2	
City/State/Province	
Postal/Zip Code	
Phone Number	
Fax Number	

BILLING CONTACT INFORMATION TABLE

Please provide the name and contact information of the Billing Contact under this Agreement. All invoices will be sent to this individual at the address set forth below.

BENEFICIARY:

Print Name:	
Title:	
Email Address	
Street Address	
Province/City/State	

DEPOSITOR:

Print Name:	
Title:	
Email Address	
Street Address	
Province/City/State	

Iowa Department of Human Services
Iowa Medicaid Enterprise System Services Request for Proposal

Postal/Zip Code	
Phone Number	
Fax Number	
Purchase order #	

Postal/Zip Code	
Phone Number	
Fax Number	
Purchase order #	

[MUST BE COMPLETED] EXHIBIT A - Escrow Service Work Request - Deposit
Account Number: _____

Service Check box(es) to order service	Service Description – Three Party Escrow Agreement All services are listed below. Services in shaded tables are required for every new escrow account set up. Some services may not be available under the Agreement.	One-Time Fees	Annual Fees	Paying Party Check box to identify the Paying Party for each service below.
<input checked="" type="checkbox"/> Setup Fee <input checked="" type="checkbox"/> Deposit Account Fee- <input checked="" type="checkbox"/> Beneficiary Fee	Escrow Agent will setup a new escrow deposit account. Escrow Agent will set up one deposit account to manage and administrate access to Deposit Material that will be securely stored in controlled media vaults. Furthermore, Escrow Agent will provide account services that include unlimited deposits. A Client Manager will be assigned to each deposit account. Escrow Agent will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage access rights associated with the account. Beneficiary. A Client Manager will be assigned to each deposit account and to Beneficiary and will ensure fulfillment of Work Requests.			<input checked="" type="checkbox"/> Depositor - <input checked="" type="checkbox"/> Depositor - <input type="checkbox"/> Depositor - OR – <input checked="" type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> Add Deposit Tracking Notification	At least semi-annually, Escrow Agent will send an update reminder to Depositor. Thereafter, Beneficiary will be notified of last deposit. .			<input checked="" type="checkbox"/> Depositor -
<input checked="" type="checkbox"/> Add File Comparison and Analysis Test	Escrow Agent will fulfill a Work Request to perform a File Comparison and Analysis Test, which includes analyzing deposit media readability, file listing, creation of file classification table, virus scan, assurance of completed deposit questionnaire, and analysis of completed deposit questionnaire. A final report will be sent to the Parties regarding the Deposit Material to ensure consistency between Depositor's representations		N/A	<input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary

	(i.e., Exhibit B and Supplementary Questionnaire) and stored Deposit Material.			
<input checked="" type="checkbox"/> Add Deposit Compile Test	Escrow Agent will fulfill a Work Request to perform a Deposit Compile Test, which includes the File Comparison and Analysis Test as described above plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and recreating executable code, pass/fail determination, creation of comprehensive build instructions with a final report sent to the Parties regarding the Deposit Material. The Paying Party and Escrow Agent will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> Add Deposit Usability Test – Binary Comparison	Escrow Agent will fulfill a Work Request to perform one Deposit Compile Test Binary Comparison which includes a comparison of the files built from the Deposit Compile Test to the actual licensed technology on the Beneficiary's site to ensure a full match in file size, with a final report sent to the Beneficiary regarding the Deposit Material. The Paying Party and Escrow Agent will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> Add Deposit Usability Test – Full Usability Test	Escrow Agent will fulfill a Work Request to perform one Deposit Compile Test Full Usability which includes a confirmation that the built applications work properly when installed. A final report will be sent to the Parties regarding the Deposit Material. The Paying Party and Escrow Agent will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Dual/Remote Vaulting	Escrow Agent will fulfill a Work Request to store deposit materials in one additional location as defined within the Service Agreement. Duplicate storage request may be in the form of either physical media or electronic storage.			<input type="checkbox"/> Depositor -

<input type="checkbox"/> Release Deposit Material	Escrow Agent will process Beneficiary's Work Request to release Deposit Material by following the specific procedures defined in Exhibit C "Release of Deposit Materials" the Escrow Service Agreement.	No Fee for Release	N/A	N/A
<input type="checkbox"/> Add Custom Services	Escrow Agent will provide its Escrow Expert consulting based on a custom SOW mutually agreed to by all Parties.	Based on SOW	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary

EXHIBIT B DEPOSIT MATERIAL DESCRIPTION

COMPANY NAME: _____ **ESCROW ACCOUNT NUMBER:** _____

DEPOSIT NAME _____ **AND DEPOSIT VERSION** _____ **V 8.0** _____

(Deposit Name will appear in account history reports)

DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

Media Type	Quantity	Media Type	Quantity
<input checked="" type="checkbox"/> CD-ROM / DVD		<input type="checkbox"/> 3.5" Floppy Disk	
<input type="checkbox"/> DLT Tape		<input type="checkbox"/> Documentation	
<input type="checkbox"/> DAT Tape		<input type="checkbox"/> Hard Drive / CPU	
		<input type="checkbox"/> Circuit Board	

	Total Size of Transmission (specify in bytes)	# of Files	# of Folders
<input type="checkbox"/> Internet File Transfer			
<input type="checkbox"/> Other (please describe below):			

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted? ☐ Yes or ☒ No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required _____

information _____

DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information)

<input checked="" type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Escrow Agent at the address below.	<input checked="" type="checkbox"/> Escrow Agent has inspected and accepted the above described Deposit Material either electronically or physically. Escrow Agent will notify Depositor of any discrepancies.
Name:	Name:
Print Name:	Print Name:
Date:	Date:
Email Address:	
Telephone Number:	
Fax Number:	

Note: If Depositor is physically sending Deposit Material to Escrow Agent, please label all media and mail all Deposit Material with the appropriate Exhibit B via commercial express carrier to the following address:

FOR ESCROW AGENT USE ONLY: (NOTED DISCREPANCIES ON VISUAL INSPECTION)

EXHIBIT C

RELEASE OF DEPOSIT MATERIAL

Deposit Account Number: _____

Escrow Agent will use the following procedures to process any Beneficiary Work Request to release Deposit Material. All notices under this Exhibit C shall be sent pursuant to the terms of Section 12(g) Notices.

1. **Release Conditions.** Beneficiary may submit a Work Request for the release of the Deposit Material, and the Escrow Agent will release and deliver the Deposit Material to Beneficiary, based on one or more of the following conditions (defined as “**Release Conditions**”):
 - (i) Depositor violates or commits a breach of any material term or condition of the Software License Agreement or any agreement relating to maintenance and support of the Software, and Depositor fails to cure such breach within any time period established for curing such breach, provided cure is feasible;
 - (ii) Depositor assigns, transfers, delegates or subcontracts any of its maintenance or support obligations under, or any interest in, any agreement it may have with Beneficiary relating to maintenance and support of the Software, without the prior written consent of Beneficiary;
 - (iii) Depositor ceases to provide maintenance and support to Beneficiary, whether due to its ceasing to conduct business generally or otherwise, including, but not limited to Depositor’s decision to no longer maintain or support the Software provided to Depositor under the Software License Agreement;
 - (iv) Depositor terminates or suspends its business or ceases to do business;
 - (v) Depositor becomes subject to any bankruptcy or insolvency proceeding under federal or state law;
 - (vi) Depositor has become insolvent or unable to pay its obligations as they accrue or become due;
 - (vii) Depositor makes an assignment for the benefit of Depositor’s creditors;
 - (viii) A receiver, trustee, liquidator, custodian or similar official has been appointed to act on behalf of the Depositor with respect to any of its operations or assets;
 - (ix) Depositor merges, is sold, or enters into an agreement to sell all or substantially all of its assets, resulting in Depositor’s failure to remain a party to, or otherwise retain

all of its rights and obligations under, the Software License Agreement or any agreement relating to maintenance and support of the Software, and the survivor or acquirer does not assume all of Depositor's rights and obligations under such agreements, whether by operation of law, written agreement or otherwise; or

- (x) Depositor violates or commits a breach of any term or condition of this Agreement, which breach has not been cured by Depositor within any applicable time period stated herein for curing such breach.
- 2. Release Work Request. Beneficiary may submit a written Work Request to Escrow Agent to release the Deposit Material covered under this Agreement. In such Work Request, Beneficiary must specify the Release Condition(s) that has/have occurred. Beneficiary will transmit a copy of the Work Request to Depositor on the same day it transmits such request to Escrow Agent.
- 3. Release of Deposit Material. Within ten (10) days of Escrow Agent's receipt of Beneficiary's Work Request to release the Deposit Material, Escrow Agent will release and deliver the Deposit Material to Beneficiary.
- 4. Termination of Agreement Upon Release. This Agreement will terminate upon the Escrow Agent's actual delivery of all Deposit Material to Beneficiary in accordance with the terms of this Agreement.
- 5. Right to Use Following Release. Upon release of the Deposit Materials, Beneficiary shall have all rights and privileges set forth in the Software License Agreement with respect to the Software and Deposit Material. Beneficiary shall be obligated to adhere to any applicable confidentiality obligations set forth in Section 9.2 of the Software License Agreement with respect to the released Deposit Material.

EXHIBIT D

ESCROW DEPOSIT QUESTIONNAIRE

Introduction

From time to time, Beneficiary may exercise its right to perform verification services. This is a service that Escrow Agent provides for the purpose of validating relevance, completeness, currency, accuracy and functionality of deposit materials.

Purpose of Questionnaire

In order for Escrow Agent to determine the deposit material requirements, a completed deposit questionnaire is requested. It is the responsibility of the Depositor to complete the questionnaire.

Instructions

Please complete the questionnaire in its entirety by answering every question with accurate data. Upon completion, please return the completed questionnaire to the beneficiary asking for its completion, or e-mail it to Escrow Agent.

General Description

1. What is the general function of the software to be placed into escrow?
2. On what media will the source code be delivered?
3. What is the size of the deposit in megabytes?

Requirements for the Execution of the Software Protected by the Deposit

1. What are the system hardware requirements to successfully execute the software? (memory, disk space, etc.)
2. How many machines are required to completely set up the software?
3. What are the software and system software requirements, to execute the software and verify correct operation?

Requirements for the Assembly of the Deposit

1. Describe the nature of the source code in the deposit. (Does the deposit include interpreted code, compiled source, or a mixture? How do the different parts of the deposit relate to each other?)
2. How many build processes are there?
3. How many unique build environments are required to assemble the material in the escrow deposit into the deliverables?
4. What hardware is required for each build environment to compile the software? (including memory, disk space, etc.)
5. What operating systems (including versions) are used during compilation? Is the software executed on any other operating systems/version?
6. How many separate deliverable components (executables, share libraries, etc.) are built?
7. What compilers/linkers/other tools (brand and version) are necessary to build the application?
8. What, if any, third-party libraries are used to build the software?
9. How long does a complete build of the software take? How much of that time requires some form of human interaction and how much is automated?
10. Do you have a formal build document describing the necessary steps for system configuration and compilation?

11. Do you have an internal QA process? If so, please give a brief description of the testing process.
12. Please list the appropriate technical person(s) Escrow Agent may contact regarding this set of escrow deposit materials.

Please provide your technical verification contact information below:

COMPANY:	
SIGNATURE:	
PRINT NAME:	
ADDRESS 1:	
ADDRESS 2:	
CITY, STATE, ZIP	
TELEPHONE:	
EMAIL ADDRESS:	

Attachment B

Contract Attachment B

Software Maintenance and Technical Support Agreement

This Agreement for Software Maintenance and Technical Support (this “Agreement”), made and effective as of [date] (“Effective Date”), by and between the State of Iowa, acting by and through the Iowa Department of Human Services (“Agency”) and [name of vendor], a corporation organized under the laws of _____ (“Vendor”). The parties agree as follows:

Section 1. Purpose and Term.

- 1.1 Purpose.** The parties have entered into this Agreement for the purpose of retaining Vendor to provide maintenance and technical support services for the software described in Schedule A. Vendor will provide all of the services described in this Agreement.
- 1.2 Term.** This agreement supplements the System Services Contract entered into between the Agency and Vendor pursuant to RFP No. MED-12-001 (“Services Contract”). The initial term of this Agreement is for one year, commencing on the day following the termination or expiration of the Services Contract (the “Initial Term”), unless terminated earlier in accordance with the terms of this Agreement. After the expiration of the Initial Term, the Agency may elect to renew this Agreement with respect to all or a portion of the Software for additional one-year periods (“Renewal Terms”). The Vendor will provide the Agency with written notice of the pending expiration of the Initial Term and every subsequent Renewal Term at least 90 days before such expiration to afford the Agency with adequate time to provide written notice of its intention to renew the term of this Agreement. The Agency may elect to renew maintenance and technical support for some but not all of the Software by paying the appropriate pro-rata portions of the maintenance fee. The decision to renew this Agreement with respect to all or any portion of the Software will be at the sole option of the Agency and may be exercised by the Agency by providing written notice to Vendor. The Agency may continue to renew this Agreement for so long as it uses all or any part of the Software under the Software License Agreement, and the Vendor shall provide maintenance and support services during each and every Renewal Term in accordance with the terms of this Agreement. Any termination of this Agreement in accordance with the terms hereof shall not act to terminate the Software License Agreement.

Section 2. Definitions.

In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:

“**Confidential Information**” means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by the Agency to the Vendor that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to

be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Vendor from a source other than the Agency party prior to the time of disclosure of the information by the Agency to the Vendor; (ii) was known to the Vendor prior to the disclosure of the information by the Agency; (iii) was disclosed to the Vendor without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Vendor in violation of this Agreement or in breach of any other agreement with the Agency; (v) is independently developed by the Vendor without any reliance on Confidential Information disclosed by the Agency; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Vendor with the written consent of the Agency.

“Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to the Software, including, without limitation, any failure of the Software to conform to, meet, or function in accordance with an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of the Software.

“Documentation” means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, code, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Software, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“Enhancements” shall mean any and all updates, upgrades, patches, additions, modifications, releases, or other enhancements made by Vendor with respect to the Software, any new Vendor releases of Software, and all changes to the Documentation and Source Code made by Vendor as a result of such Enhancements.

“Services Contract” means the Services Agreement by and between the Agency and Vendor dated effective as of _____.]

“Software” means the proprietary software components installed as part of the Iowa Medicaid Management Information System pursuant to the service contract that arose from RFP # MED-12-001 and all other software, programs, applications and components listed in Schedule A, and all related Documentation and Enhancements, and all copies of the foregoing.

“Software License Agreement” means the Software License Agreement by and between Vendor and the Agency dated _____.

“Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Software stated or expressed in this Agreement, the Services Contract, Documentation, the Agency’s Request for Proposal No. MED-12-001 for the Iowa Medicaid Enterprise System Services Request for Proposal (“RFP”), and the Vendor’s proposal dated _____, in response to the RFP (“Proposal”). Specifications shall include any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

“Third Party” means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

“Warranty Period” means the warranty period specified under the Software License Agreement during which period the Vendor is required to correct any Deficiencies pertaining to the Software, repair or replace the Software, or to otherwise address or resolve any problem related to the Software or Agency’s use thereof.

Section 3. Documents Incorporated.

3.1 Incorporation. The Agency’s Request for Proposal No. MED-12-001 for the Iowa Medicaid Enterprise System Services Request for Proposal ("RFP") and the Vendor’s proposal dated _____, in response to the RFP ("Proposal"), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of the Vendor’s proposed exceptions or modifications to the sample contracts attached to the RFP shall be incorporated into this Agreement unless expressly set forth herein.

3.2 Contractual Obligations. The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, except that any proposed revisions or modifications made by Vendor to the sample contracts attached to the RFP Proposal shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or the Agency hereunder, unless expressly stated herein.

3.3 Preference. In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal.

3.4 No Inconsistency. The references to the parties’ obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, the Agency shall have only those obligations that are expressly stated in this document, and the Proposal does not create any express or implied obligations of the Agency.

Section 4. Scope of Work.

4.1 Scope of Work. Vendor shall perform and provide the Agency with the Software maintenance and technical support services in accordance with Schedule A and all other terms and conditions of this Agreement. Schedule A is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

- 4.2 Amendments to Schedule A.** The parties agree that Schedule A may be amended, modified, or replaced at any time during the term of this Agreement upon the mutual written consent of the parties.
- 4.3 Performance Standards.** The parties agree that the performance standards and related payment, monitoring and review provisions set forth in Schedule B are incorporated herein by this reference as if fully set forth in this Agreement.
- 4.4 Agency Not Required to Accept or Install Enhancements.** Vendor shall not condition any of the Agency's rights or Vendor's obligations under this Agreement, or any other contract related to the Software, on the Agency accepting or installing any Enhancements or additional functionality provided by Vendor.
- 4.5 Manufacturers' Warranties.** Vendor shall take all action necessary to ensure that the State and the Agency shall be entitled to receive and enjoy all warranties, indemnities and other benefits associated with the Software. At the Agency's request, Vendor shall assign to the State and the Agency all of the Software manufacturer's warranties and indemnities pertaining to the Software under any license or other agreement between Vendor and any Third Parties relating to the Software.

Section 5. Compensation and Additional Rights and Remedies.

- 5.1 Compensation.** In consideration of Vendor providing the Agency with software maintenance and technical support services in accordance with the terms and conditions of this Agreement, Vendor shall be entitled to receive the fees or other compensation associated with such services as specified in Schedule A, subject to all terms and conditions of this Agreement. Vendor is not entitled to payment for any services provided under this Agreement if the Agency reasonably determines that such services have not been satisfactorily or completely delivered or performed, or that there is a continuing material Deficiency occurring with respect to the Software. In no event shall the Agency be obligated to pay Vendor any fees, costs, compensation or other amounts in addition to or in excess of the amount specified in Schedule A, unless the Agency otherwise agrees to pay such fees, costs, compensation other amounts pursuant to a written amendment to this Agreement executed by the Agency. No advance payments shall be made for any services provided by Vendor pursuant to this Agreement.
- 5.2 Invoices.** Vendor shall, on a quarterly basis submit an invoice to the Agency requesting payment of the fees or other compensation specified in Schedule A for Software maintenance and technical support services provided by Vendor during the previous quarter. All invoices submitted by Vendor shall comply with all applicable State of Iowa rules and procedures concerning the payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Agency. The Agency will pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Agency may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Agency shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Agency believes the invoice is inaccurate or incorrect in any way.

- 5.3 Erroneous Payments and Credits.** Vendor shall promptly pay or refund to the Agency the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the Agency of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Agency under this section 5.3 the Agency will charge interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Agency may, in its sole discretion, elect to have Vendor apply any amounts due to the Agency under this Section 5.3 against any amounts payable by the Agency under this Agreement or the Software License Agreement.
- 5.4 Reimbursable Expenses.** There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Vendor.
- 5.5 Set-off Against Sums Owed by Vendor.** In the event that Vendor owes the Agency or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Agency may set off such sum against any sum invoiced to the Agency by Vendor in the Agency's sole discretion unless otherwise required by law. Any amounts due to the Agency as damages may be deducted by the Agency from any money or sum payable by the Agency to Vendor pursuant to this Agreement or any other agreement between Vendor and the Agency.
- 5.6 Withholding Payments.** In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Vendor, in whole or in part, without penalty or legal liability to the Agency or work stoppage by Vendor, in the event the Agency determines that: (i) Vendor has failed to perform any of its duties or obligations as set forth in this Agreement and/or the Software License Agreement; or (ii) any Software has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Agency under this Agreement.
- 5.7 Correction/Cure.** The Agency may provide or procure the services reasonably necessary to cure any default by Vendor that is not timely cured by Vendor, in which event Vendor shall reimburse the Agency for the actual costs incurred by the Agency for such services (or for the reasonable value of the time expended by any Agency or State employees who provide such services). In addition, Vendor shall cooperate with the Agency or any Third Parties retained by the Agency who assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor.
- 5.8 Monitoring and Review.** The Agency shall monitor and review Vendor's performance under this Agreement to ensure compliance with this Agreement. Such review and monitoring shall include the Agency's assessment of invoices and reports furnished by Vendor pursuant to this Agreement.

Section 6. Security Regulation; Cooperation.

Vendor and Vendor's personnel shall comply with the Agency's and the State's security regulations including any procedure which the Agency's personnel, contractors and consultants are normally asked to follow. Vendor agrees to cooperate fully and to provide any assistance necessary to the Agency in the investigation of any security breaches that may involve Vendor or Vendor's personnel.

Section 7. N/A

Section 8. Representations, Warranties and Covenants

- 8.1** Vendor represents and warrants that it has full legal power and authority and has secured all rights necessary to provide all of the services to be provided by it to the Agency under this Agreement, and that Vendor's performance of its obligations hereunder will not conflict with or violate the terms of any agreement Vendor may have with any Third Party.
- 8.2** All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Agency, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.
- 8.3** Vendor represents, warrants and covenants that all services to be performed under this Agreement shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Vendor of any services performed in violation of this standard, Vendor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Vendor is unable to perform the services as warranted, Vendor shall reimburse the Agency any fees or compensation paid to Vendor for the unsatisfactory services.
- 8.4** Vendor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in connection with its performance under this Agreement.
- 8.5** Vendor represents, warrants and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.
- 8.6** Vendor represents and warrants that any Enhancements or modifications to the Software will comply with any applicable federal, state foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Agreement, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access

Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

- 8.7** Vendor covenants that it will comply with and adhere to all Agency and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and that Vendor will take all precautions necessary to prevent unauthorized access to the Agency's and the State's systems, networks, computers, property, records, data, and information.
- 8.8** Vendor represents and warrants it is not in arrears with respect to the payment of any monies due and owing the State or any agency or other Governmental Entity thereof, including but not limited to the payment of taxes and employee benefits, and it will not become so during the Term of this Agreement, or any extensions thereof.
- 8.9** Vendor's warranties provided in this Section 8 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Agency.

Section 9. Indemnification.

- 9.1** Vendor and its successors and permitted assigns shall indemnify and hold harmless the Agency, the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office, expert fees, costs of the action, as well as expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:
- 9.1.1** Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or misleading; or
- 9.1.2** Any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Vendor, its officers, employees, agents, board members, subsidiaries, affiliates, contractors or subcontractors; or
- 9.1.3** Vendor's performance or attempted performance of this Agreement; or
- 9.1.4** Failure by Vendor or its employees, agents, officers, directors, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, federal and international laws, rules, ordinances and regulations; or
- 9.1.5** Any failure by Vendor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to Social Security, worker's compensation, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State; or
- 9.1.6** Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party, including any claim that all or any part of the Software or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent,

copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party.

9.2 Vendor's obligations under this Section 9 are not limited to third-party claims, but shall also apply to any claims that either party may assert against the other.

9.3 Vendor shall be liable for any personal injury or damage to property caused by the fault or negligence of Vendor, its officers, directors, employees, agents and approved contractors or subcontractors.

9.4 Vendor's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Department or any other Indemnitee.

Section 10. Default and Termination.

10.1 Termination for Cause by the Agency. The Agency may terminate this Agreement upon written notice for the breach by Vendor of any material term, condition or provision of this Agreement, if such breach is not cured within the time period specified in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to Vendor, provided that cure is feasible. In addition, the Agency may terminate this Agreement effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:

10.1.1 Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, the Software License Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;

10.1.2 Vendor or any of Vendor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

10.1.3 Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;

10.1.4 Vendor terminates or suspends its business;

10.1.5 Vendor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited;

10.1.6 Vendor has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement;

10.1.7 The Agency determines or believes the Vendor has engaged in conduct that has or may expose the Agency or the State to material liability;

10.1.8 Vendor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Vendor misappropriates or allegedly misappropriates a trade secret; or

10.1.9 Any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

10.1.9.1 Commencing or permitting a filing against it which isn't discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material

allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

10.1.9.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

10.1.9.3 Making an assignment for the benefit of creditors;

10.1.9.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement [or the Software License Agreement]; or

10.1.9.5 Taking any action to authorize any of the foregoing.

The Agency's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

10.2 Termination for Convenience. Following thirty (30) days written notice, the Agency may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to Vendor. Termination for convenience can be for any reason or no reason at all.

10.3 Termination Due to Lack of Funds or Change in Law. Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, the Agency shall have the right to terminate this Agreement without penalty or legal liability and without any advance notice as a result of any of the following:

10.3.1 The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; or

10.3.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or

10.3.3 If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or

10.3.4 If the Agency's duties, programs or responsibilities are modified or materially altered; or

10.3.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Agreement.

The Agency shall provide Vendor with written notice of termination pursuant to this section.

10.4 Limitation of the State's Payment Obligations. In the event of termination of this Agreement for any reason by either party (except for termination by the Agency pursuant to Section 10.1), the Agency shall pay only those amounts, if any, due and owing to Vendor up to and including the date of termination of this Agreement and for which the Agency is obligated to pay pursuant to this Agreement; provided however, that in the event the Agency terminates this Agreement pursuant to Section 10.3, the Agency's obligation to pay Vendor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement or any amounts withheld by the Agency in accordance with the terms of this Agreement. The Agency shall not be liable, under any circumstances, for any of the following:

10.4.1 The payment of unemployment compensation to Vendor's employees;

10.4.2 The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

10.4.3 Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement and/or the Software License Agreement;

10.4.4 Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement or the Software License Agreement;

10.4.5 Any taxes Vendor may owe in connection with the performance of this Agreement or the Software License Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

10.5 Vendor's Termination Duties. Upon receipt of notice of termination and upon request of the Agency, Vendor shall:

10.5.1 Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Agency may require.

10.5.2 Immediately cease using and return to the Agency any property (including, without limitation, Agency Property) or materials, whether tangible or intangible, provided by the Agency to Vendor.

10.5.3 Cooperate in good faith with the Agency and its employees, agents and independent contractors during the DDI period between the notification of termination and the substitution of any replacement service provider.

10.5.4 Immediately return to the Agency any payments made by the Agency for services that were not rendered or provided by Vendor.

10.6 Termination for Cause by Vendor. Vendor may only terminate this Agreement upon written notice of the breach by the Agency of any material term of this Agreement, if such breach is not cured within sixty (60) days of the Agency's receipt of Vendor's written notice of breach.

Section 11. Insurance.

11.1 Insurance Policies. Vendor shall, at its sole expense, maintain in full force and effect, with insurance companies admitted to do business in the State of Iowa and acceptable to the Agency, insurance covering its work of the type and in amounts required by this Agreement. Vendor's insurance shall, among other things, insure against any loss or damage resulting from or related to Vendor's performance of this Agreement regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Agreement shall: (i) be subject to the approval of the Agency; (ii) remain in full force and effect for the entire term of this Agreement; and (iii) not be canceled, reduced or changed without the Agency's prior written consent. The State of Iowa and the Agency shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: "It is hereby agreed and understood that the State of Iowa and the Agency are named as additional insureds, and that the coverage afforded to the State of Iowa and the Agency under this policy shall be primary insurance. If the State of Iowa or the Agency have other insurance which is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer's liability under this policy shall not be reduced by the existence of such other insurance."

Unless otherwise requested by the Agency, Vendor shall cause to be issued insurance policies with the coverages set forth below:

[Note: Agencies need to determine the appropriate limits and required amounts set forth below. The amounts are merely place holders].

Type of Insurance	Limit	Amount
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$5 million
	Products –	
	Comp/Op	\$1 million
	Aggregate	\$1 million
	Personal injury	\$1 million
Excess Liability, umbrella form	Each Occurrence	
	Each Occurrence	\$1 million
	Aggregate	\$2 million
Errors and Omissions Insurance	Each Occurrence	\$2 million
Property Damage	Each Occurrence	\$1 million
	Aggregate	\$2 million
Workers Compensation and Employer Liability	As Required by Iowa law	

11.2 Claims Provision. All insurance policies required by this Agreement must provide coverage on an "occurrence basis" for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

- 11.3 Certificates of Coverage.** At the time of execution of this Agreement, Vendor shall deliver to the Agency certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to this Agreement, certifying that the State of Iowa and the Agency are named as additional insureds on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the Agency. All certificates of insurance shall be subject to approval by the Agency. The Vendor shall simultaneously with the delivery of the certificates deliver to the Agency one duplicate original of each insurance policy.
- 11.4 Liability of Vendor.** Acceptance of the insurance certificates by the Agency shall not act to relieve Vendor of any obligation under this Agreement. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement. Vendor shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Vendor shall have no claim or other recourse against the State or the Agency for any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the Vendor. Notwithstanding any other provision of this Agreement, Vendor shall be fully responsible and liable for meeting and fulfilling all of its obligations under Section 11 of this Agreement.
- 11.5 Waiver of Subrogation Rights.** Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Agency or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Agency.
- 11.6 Filing of Claims.** In the event either the Agency or the State suffers a loss and is unable to file a claim under any policy of insurance required under this Agreement, the Vendor shall, at the Agency's request, immediately file a proper claim under such policy. Vendor will provide the Agency with proof of filing of any such claim and keep the Agency fully informed about the status of the claim. In addition, Vendor agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the Agency and the State. Vendor shall pay to the Agency and the State any insurance proceeds or payments in receives in connection with any such claim immediately upon Vendor's receipt of such proceeds or payments.
- 11.7 Proceeds.** In the event the Agency or the State suffers a loss that may be covered under any of the insurance policies required under this Section 11, neither the Vendor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the Agency and/or the State have fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Vendor hereby assigns to the Agency and the State all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Agreement.

Section 12. Contract Administration.

12.1 Independent Contractor. Vendor is an independent contractor performing services for the Agency. Vendor shall not hold itself out as an employee or agent of the Agency. The Agency shall not provide Vendor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither Vendor nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Vendor and its staff shall not be considered employees of the Agency or the State for any purpose, including for federal or State tax purposes. The Agency shall not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

12.2 Compliance with the Law and Regulations.

12.2.1 Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Iowa Department of Management regarding equal employment. Vendor may be required to submit its affirmative action plan to the Iowa Department of Management to comply with the requirements of 541 Iowa Admin. Code Chapter 4. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to Vendor's performance of this Agreement.

12.2.2 Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to the fulfillment or performance of this Agreement.

12.2.3 The Agency may consider the failure of Vendor to comply with any law or regulation as a material breach of this Agreement.

12.3 Confidentiality. Vendor and its employees, agents, approved contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed, owned or maintained by the Agency or the State ("Agency Property") to the extent necessary to carry out its responsibilities under the Agreement. Such Agency Property shall at all times remain the property of the Agency and/or the State. Vendor shall preserve the confidentiality of Agency Property disclosed or furnished by the Agency to Vendor and shall maintain procedures for safeguarding such property. Vendor must designate one individual who shall remain the responsible authority in charge of all Agency Property collected, used, or disseminated by Vendor in connection with the performance of this Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents, and any approved contractors or

subcontractors may be required by the Agency to execute confidentiality or non-disclosure agreements to obtain access to certain Agency Property. Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any Agency Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by the Agency to enable Vendor to perform its obligations under this Agreement and except as required by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Vendor agrees to return any and all Agency Property received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of the Agency. In the event that Vendor receives a request for access to any Agency Property, Vendor shall immediately communicate such request to the Agency for consideration and handling.

Vendor shall indemnify the Agency, the State and all other Indemnitees in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, the Agency may terminate this Agreement immediately without notice of default and opportunity to cure. Vendor acknowledges that the disclosure of any Confidential Information of the Agency or the State will immediately give rise to continuing irreparable injury to the Agency and others that is inadequately compensable in damages at law. Accordingly, and without prejudice to any other remedy available to the Agency, the Agency will be entitled to injunctive relief. Vendor's obligations under this section shall survive expiration or termination of this Agreement.

12.4 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement.

12.5 Third Party Rights. No person other than the parties hereto, their respective successors and permitted assigns, the State and Governmental Entities may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Agency, the State, Governmental Entities and the Vendor.

12.6 Choice of Law and Forum.

12.6.1 This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof.

12.6.2 Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise.

12.6.3 This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Agency or the State, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise.

12.6.4 Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints _____, as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the Agency with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Agency. Nothing in this provision will alter the right of the Agency to serve process in any other manner permitted by law.

12.6.5 This Section 12.6 shall survive termination of this Agreement.

12.7 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that the Agency may assign this Agreement to any State agency or unit of State government that succeeds the Agency's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Agency. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide the Agency with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of the Agency.

12.8 Use of Subcontractors/Third Parties. None of the services to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of the Agency. The Agency's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Agency, whether financial or otherwise. Any subcontract to which the Agency has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. **All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Agency may deem necessary.** Vendor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. Vendor shall indemnify, defend and hold harmless the Agency and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any subcontractor. In addition, the Agency is not responsible for any failure of any other subcontractor to pay any amounts that may be due to Vendor, and Vendor may not refuse to perform its obligations under this Agreement for any such failure. If Vendor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to Vendor or any subcontractor by any person in connection with the services provided under this Agreement, the Agency may pay such claim and charge the amount of the payment against funds due or to become due Vendor under this Agreement.

The payment of a claim in the manner authorized in this paragraph shall not relieve Vendor or its surety from obligation with respect to any unpaid claims. All subcontracts shall contain provisions for the Agency access to the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

12.9 Integration. This Agreement and the Software License Agreement represents the entire Agreement between the parties concerning the subject matter hereof, and neither party is relying on any representation that may have been made which is not included in this Agreement or the Software License Agreement. The Agency shall not be bound by any “shrink-wrap” agreement, “click-wrap” agreement, or “sneakwrap” agreement (or any other similar agreement) that may accompany or relate to the Software. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Agency on the basis of draftsmanship or preparation thereof.

12.10 Obligation Beyond Agreement Term. This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. Vendor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 4.1, 4.5, 5.1 - 5.7, 8.1 - 8.9, 9.1 - 9.4, 10.4 - 10.6, 11.1-11.7, 12.2, 12.3, 12.6, 12.8, 12.10 - 12.16, 12.18, 12.19, 12.23, 12.24, 12.25, 12.28, 12.30, 12.32, 12.33, 12.36, and 12.37 – 12.39 shall survive termination of this Agreement and/or termination of maintenance and support services.

12.11 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the Agency and Vendor for the Software maintenance and technical support services provided in connection with this Agreement, except for the Software License Agreement.

12.12 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

12.13 Notices.

12.13.1 Notices. Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice

hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the Agency:

If to Vendor:

12.13.2 Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

12.13.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

12.14 Cumulative Rights. The various rights, powers, options, elections and remedies of the Agency and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed the Agency and the State by law, and shall in no way affect or impair the right of the Agency or the State to pursue any other contractual, equitable or legal remedy to which the Agency and the State may be entitled. The election by the Agency or the State of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

12.15 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

12.16 Time is of the Essence. Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all personnel, including any subcontractors of Vendor, providing services to the Agency are responsive to the Agency's requirements and requests in all respects.

12.17 Authorization. Vendor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Vendor, enforceable in accordance with its terms.

12.18 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties' hereto and their respective successors, assigns, and legal representatives.

12.19 Records Retention and Access. Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section.

12.20 Headings or Captions and Terms. The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

12.21 Multiple Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

12.22 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Agreement.

12.23 Additional Provisions. The parties agree that if an Addendum, Rider, Schedule, Appendix or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

12.24 Further Assurances and Corrective Instruments. The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

12.25 Obligations of Joint Entities. If Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

12.26 Delays or Impossibility of Performance. Neither party shall be in default under this Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a “force majeure.” The term “force majeure” as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. “Force majeure” does not include: financial difficulties of the Vendor or any parent, subsidiary, affiliated or associated company of Vendor or any subcontractor used by Vendor; claims or court orders that restrict Vendor’s ability to deliver the Deliverables contemplated by this Agreement; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor’s or supplier’s conduct, negligence or failure to perform, the Vendor shall not be excused from compliance with the terms and obligations of the Vendor unless the subcontractor or supplier is prevented from timely performance by a “force majeure” as defined in this Agreement. If a “force majeure” delays or prevents the Vendor’s performance, the Vendor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a “force majeure” shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which the Vendor’s performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

12.27 Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

12.28 Right of Inspection. Vendor shall allow the Agency, or anyone designated by the Agency, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.

12.29 Taxes. Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Agency and the State are exempt from the payment of State sales and other taxes.

12.30 Title to Property. Title to all property (including Agency Property) furnished by the Agency and/or the State to Vendor to facilitate the performance of this Agreement shall

remain the sole property of the Agency and/or the State. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Agency upon the earliest of completion, termination, or cancellation of this Agreement or at the Agency's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Vendor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by the Agency under this Agreement, shall pass to and vest in the Agency and/or State, except as otherwise provided in this Agreement.

12.31 Exclusivity. This Agreement is not exclusive. During the term of this Agreement, the Agency may obtain similar services from other service providers.

12.32 Award of Related Agreements. The Agency may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with other contractors, consultants and other persons who may be engaged by the Agency or the State in connection with this Agreement. Vendor will ensure that any of its contractors or subcontractors that have been approved by the Agency will abide by this provision.

12.33 Sovereign Immunity. The Agency and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

12.34 Disclaimer. All information contained in the RFP and any appendices or attachments thereto reflect the information available to the Agency at the time the above-cited documents were prepared. The Agency does not warrant the accuracy of any such information and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in those documents.

12.35. Assignment of Third Party Warranties. Vendor hereby assigns and shall assign to the Agency any and all existing and future warranties, indemnities and other benefits obtained or available from the licensor of any Third Party software or the manufacturer of any equipment or replacement parts provided or otherwise furnished in connection with this Agreement.

12.36. Attorney's Fees and Expenses. In the event Vendor defaults in any obligations under this Agreement, Vendor shall pay to the Agency all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the expert fees, costs, expenses and attorney fees of other counsel retained by or on behalf of the Agency) incurred by the Agency in enforcing this Agreement or any of its rights and remedies with respect thereto.

12.37 Contract Compliance Audit. Vendor agrees that the Agency or a representative of its selection may conduct a complete contract compliance audit at least once annually during the term of this Agreement and after termination or expiration of this Agreement to determine whether or not the Vendor is complying with the terms of this Agreement, criteria established for access to Agency Property, State and federal laws regarding

Confidential Information, and any other applicable laws and regulations. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested by the Agency or its representatives. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

12.38 Care of Property. Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and Agency Property furnished by the Agency for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at the Agency request, restore damaged property to the extent possible to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the Agency. In addition, at the Agency's request, Vendor will reimburse the Agency for any loss or damage to such property caused by Vendor, or any agent, contractor or subcontractor employed or utilized by Vendor. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of the Agency and the State. Vendor shall obtain the prior advance written approval from the Agency prior to Vendor's use (in advertising, publicity, public contract bidding, or otherwise) of the name, marks or intellectual property rights of the Agency or the State.

12.39 Notification of Events. Vendor shall notify the Agency in writing if any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

12.39.1 Vendor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or

12.39.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or

12.39.3 Making an assignment for the benefit of creditors; or

12.39.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement; or

12.39.5 An order is entered approving an involuntary petition to reorganize the business of Vendor for all or part of its property; or

12.39.6 If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Vendor is issued by any court or administrative agency against all or any material portion of Vendor's property; or

12.39.7 Taking any action to authorize any of the foregoing.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

**State of Iowa, acting by and through the
[name of Agency]**

[name of Vendor]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

SCHEDULE A

SCHEDULE B